Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Western Wireless Corporation Petition for Waiver of Section 54.313(d)(3) of the Commission's Rules	)	

To: Wireline Competition Bureau

WESTERN WIRELESS PETITION FOR WAIVER OF SECTION 54.313(D)(3) OF THE COMMISSION'S RULES

Western Wireless Corporation, on behalf of its wholly owned subsidiary, WWC Holding Co., Inc. d/b/a CellularOne® (collectively, "Western Wireless"), by its counsel and pursuant to 47 C.F.R. §§ 1.3 and 1.925(b), hereby petitions for a waiver of Section 54.313(d)(3) of the Rules of the Federal Communications Commission ("Commission"), 47 C.F.R. § 54.313(d)(3). Specifically, Western Wireless requests waiver of certification filing deadlines set forth in 47 C.F.R. § 54.313(d)(3)(i) and (ii) to enable it to receive high-cost universal service support from the High-Cost Model ("HCM") fund commencing in the first quarter of 2005 consistent with the Order of the Montana Public Service Commission ("Montana PSC") granting Western Wireless' Application for designation as a competitive eligible telecommunications carrier ("ETC") in non-rural areas in the State of Montana.[1] Grant of the requested waiver will be consistent with the Commission's well-established precedent and will advance the public interest and benefit

[1] Western Wireless is entitled to Interstate Access Support ("IAS") funding in Montana as well, but no waiver is necessary, since the required self-certification and line count reports were filed in a timely manner.

consumers in rural and high-cost areas of Montana by promoting the provision of universal service.

I. BACKGROUND

Western Wireless is a provider of commercial mobile radio service ("CMRS") in the State of Montana. Western Wireless has been designated as an ETC in 14 states.

On January 29, 2003, Western Wireless filed an Application with the Montana PSC seeking designation as a competitive federal ETC in certain areas in Montana (the "Designated Areas") served by Qwest Corporation, a so-called "non-rural" incumbent local exchange carrier.[2] On October 14, 2004, the Montana PSC issued its *ETC Order* designating Western Wireless as a competitive ETC throughout the Designated Areas subject to certain ongoing conditions.[3] Western Wireless and other parties moved for reconsideration of certain aspects of the ETC Order. On December 21, 2004, the Montana PSC issued its *ETC Reconsideration Order*, which affirmed and clarified the *ETC Order*.[4] Western Wireless' designation as a competitive ETC throughout the Designated Areas thus became effective on December 21, 2004 (the effective date of the *ETC Reconsideration Order*).[5]

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[2] *In the Matter of the Application of WWC Holding Co., Inc. for Designation as an Eligible Telecommunications Carrier*, Docket No. D2003.1.14, *Application for Designation as an Eligible Telecommunications Carrier in Areas Served by Qwest* (Jan. 29, 2003) ("*Application*").

[3] *In the Matter of WWC Holding Co., Application for Designation as an Eligible Telecommunications Carrier in Montana Areas Served by Qwest Corporation*, Docket No. D2003.1.14, *Final Order*, Order No. 6492a (Oct. 14, 2004, service date: Oct. 22, 2004) ("*ETC Order*") (attached as **Exhibit A** hereto).

[4] *In the Matter of WWC Holding Co., Application for Designation as an Eligible Telecommunications Carrier in Montana Areas Served by Qwest Corporation*, Docket No. D2003.1.14, *Order on Reconsideration*, Order No. 6492b (Dec. 21, 2004, service date: Jan. 5, 2005) ("*ETC Reconsideration Order*") (attached as **Exhibit B** hereto).

[5] *See* ARM 38.2.4806(6) ("When order final for purpose of appeal. A commission order is final for purpose of appeal upon the entry of a ruling on a motion for reconsideration…"). The ordering section of the *ETC Reconsideration Order* (p. 24) states "Done and dated this 21st day of December, 2004…", indicating that it was entered on December 21, 2004.

On February 17, 2005, Western Wireless certified to the Montana PSC that it would use all federal high-cost universal service support that it received in 2005 only for the provision, maintenance, and upgrading of the facilities and services for which the support is intended, pursuant to Section 254(e) of the Telecommunications Act of 1996 (the "Act")[6] and requested that the Montana PSC certify Western Wireless' use of HCM support for the Designated Areas to the Commission and the Universal Service Administrative Company ("USAC"). On March 21, 2005, the Montana PSC certified Western Wireless' use of federal high-cost universal service HCM support received for Designated Areas in 2005 to the Commission and to USAC.[7]

Because the Montana PSC's certification qualifies Western Wireless for receipt of federal universal service HCM support in 2005 only, Western Wireless is not herein seeking support for the period from December 21, 2004 (the effective date of the *ETC Reconsideration Order*) through December 31, 2004. Instead, Western Wireless seeks to qualify for receipt of high-cost universal service HCM support beginning January 1, 2005.[8]

Western Wireless seeks a waiver of the annual state certification deadlines set forth in Section 54.313(d)(3) that would otherwise require that the Montana PSC file a certification of Western Wireless' use of high cost funds on or before October 1, 2004 (over two months *before* Western Wireless was designated an ETC) to allow Western Wireless to qualify for receipt of federal universal service HCM support effective beginning January 1, 2005. Waiver of these

[6] A copy of this certification to the Montana PSC is attached as **Exhibit C** hereto.

[7] A copy of the Montana PSC's certification is attached as **Exhibit D** hereto. Note that all line count filings were submitted in a timely manner (formerly with a designation of "ineligible"), so no waiver is needed with respect to line count filing deadlines.

[8] The type of support that the waiver will permit Western Wireless to receive is High Cost Model support ("HCM"). HCM is support available in certain states, including Montana, to non-rural carriers serving wire centers with forward-looking costs that exceed a specified benchmark. *See* 47 C.F.R. § 54.309(c). Qwest, the incumbent carrier in the Designated Areas, is a non-rural telephone company, and receives HCM and Interstate Access Support ("IAS") in Montana.

rules will enable Western Wireless to begin to receive federal universal service HCM support commencing as of a date shortly after its designation as a competitive ETC in the State of Montana.

II. NEED FOR WAIVER

Under Section 54.313, if a State intends for ETCs designated in non-rural telephone company areas within its jurisdiction to receive federal high-cost universal service support, it must annually file with the Commission and USAC a certification stating that all federal high-cost support will be used by the companies only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. 47 C.F.R. § 54.313(a). To qualify for receipt of high-cost universal service HCM support beginning in the first quarter of a given year, an ETC must be certified by the State on or before October 1 of the prior calendar year. 47 C.F.R. § 54.313(d)(3)(i). Certifications for the second through fourth quarters of a year must be received by January 1 of the current year, certifications for the third and fourth quarters must be received by April 1, and certifications for only the fourth quarter must be received by July 1. 47 C.F.R. § 54.313(d)(3)(ii)-(iv).

Pursuant to these deadlines, the Montana PSC would have been required to file Western Wireless' HCM certification no later than October 1, 2004, to qualify the Company to receive high-cost universal service support effective beginning January 1, 2005. 47 C.F.R. § 54.313(d)(3)(i). However, because Western Wireless' designation as a competitive ETC in the State of Montana for the areas in question was not complete until December 21, 2004, the Montana PSC could not have done so by the October 1 deadline. In fact, based on the March 21, 2005 date of the Montana PSC's certification, Western Wireless will not be eligible to receive high-cost support for the Rural Designated Areas until the third quarter of 2005. 47 C.F.R. § 54.313(d)(3)(iii). As a result, strict adherence to the certification deadlines in Section

54.313(d)(3) must be waived so that Western Wireless can begin to receive high-cost universal service support as of January 1, 2005. To do otherwise would deprive Western Wireless of much needed high-cost universal service support for the first half of 2005, even though Western Wireless began providing service as an ETC in the Designated Areas in Montana in reliance upon the *ETC Order* effective December 21, 2004.

Moreover, Western Wireless was unable to take advantage of the streamlined procedure for newly designated ETCs' certification filings adopted in *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 05-45 (released March 17, 2005) ("*ETC Designation Framework Order*"). That Order permits new ETCs to receive support as of the effective date of the ETC designations as long as they (or their state commissions) file the required certifications and line counts within 60 days after that date. However, by the date the *ETC Designation Framework Order* was released (March 17, 2005), the 60 day deadline had already passed (February 19, 2005 would have been the day 60 days after the date on which Western Wireless' designation took effect in Montana, Dec. 21, 2004). Accordingly, a waiver is necessary to ensure the prompt flow of support.

III. REQUEST FOR WAIVER

The Commission's Rules expressly provide for waiver of any Rule if good cause is first established. 47 C.F.R. § 1.3. In addition, Section 1.925(b)(3) provides for a waiver where it is shown that

> (i). The underlying purpose of the rule(s) would not be served or would be frustrated by the application to the instant case, and that a grant of the requested waiver would be in the public interest; or
>
> (ii). in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.

47 C.F.R. § 1.925(b)(3). Consistent with these Rules, the Commission "may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest." *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

In this case, strict adherence to the certification deadlines set forth in Section 54.313(d)(3) would create the unintended consequence of preventing Western Wireless from receiving federal high-cost universal support for the first two quarters of 2005, even though Western Wireless was designated and providing service as a competitive ETC effective December 21, 2004. Thus, Western Wireless would not receive timely and appropriate universal service support payments from January 1, 2005 through June 30, 2005, despite the fact that it will have operated as an ETC and provided the supported services in the Designated Areas in Montana throughout that period.

Grant of the requested waiver will advance the public interest and benefit consumers in rural and high-cost areas of Montana by promoting the provision of universal service. It will also be consistent with the Commission's numerous prior orders in which it has granted waivers to newly designated ETCs. Finally, grant of the requested waiver will be consistent with the spirit of the Commission's March 17, 2005 *Report and Order*[9] which recognizes how strict adherence to the certification deadlines causes unnecessary delay in receipt of support by newly designated ETCs, and which will, when it becomes effective, provide relief to newly designated ETCs in situations similar to Western Wireless.

[9] *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 05-46 (rel. Mar. 17, 2005) ("*Report and Order*").

A. **<u>The Limited Waiver Western Wireless Seeks Will Advance the Commission's Universal Service Goals</u>**

Granting the requested waiver of Section 54.313(d)(3)'s certification deadlines would further the Commission's public policy goals of bringing access to mobile telecommunications technologies to all citizens by enabling Western Wireless to receive support for the provision, maintenance, and upgrading of facilities and services commensurate with its service as a competitive ETC. Without timely access to this support, Western Wireless cannot fully begin to fulfill the promises of the Act: "[t]o promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." Pub. L. No. 104-104, 110 Stat. 56 (1996).

Furthermore, the Commission has found that "competitively neutral access to support is critical to ensuring that all Americans have access to affordable telecommunications."[10] Denying support for most of 2005 to Western Wireless, a competitive ETC, merely because of the timing of its ETC designation, would undermine the Commission's goal of competitive neutrality.[11]

Universal service funding is vital to Western Wireless' ability to carry out its mission as an ETC in Montana because it will allow Western Wireless to pursue the construction and upgrading of its network to better serve customers within its designated ETC service areas.

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[10] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, FCC 99-306, ¶¶ 89-90 (rel. Nov. 2, 1999), *rev'd in part and remanded in part*, *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001).

[11] *See In the Matter of Federal-State Joint Board on Universal Service, Centennial Cellular Tri-State Operating Partnership, Centennial Claiborne Cellular Corp., Petition for Waiver of Section 54.313(d) of the Commission's Rules and Regulations*, CC Docket No. 96-45, Order, DA 04-2535, ¶ 9 (rel Aug. 16, 2004) ("*Centennial Order*"); *In the Matter of Federal-State Joint Board on Universal Service, Grande Communications, Inc. Petition for Waiver of Sections 54.307 and 54.314 of the Commission's Rules and Regulations*, CC Docket No. 96-45, Order, DA 04-2534, ¶ 10 (rel Aug. 16, 2004) ("*Grande Order*").

Western Wireless should not be unfairly handicapped, stalled, or otherwise delayed in pursuing its mission as an ETC by the strict application of rules that were never intended to undermine the purpose of an ETC designation. Western Wireless should not be denied several months worth of high-cost universal service support to which it is otherwise entitled simply because the timing of its ETC designation precluded the State of Montana from filing the certification required under Section 54.313 by the October 1, 2004, deadline – over two months *prior* to Western Wireless' designation as a competitive ETC in the Designated Areas.

B. The Limited Waiver Western Wireless Seeks is Consistent with Commission Precedent

The limited waiver that Western Wireless seeks is fully consistent with, and supported by, well-established Commission precedent. Indeed, the Commission has granted numerous similar waiver requests.[12] In granting such waivers, the Commission has identified an ETC designation date as being a "special circumstance" that warrants a limited waiver to allow a new ETC to file retroactive certifications so that ETC support can timely commence.[13] Further, in granting a waiver to the State of West Virginia for the late filing of its certification for non-rural ETCs, the Commission reasoned that "the potential harm that would be suffered by customers

[12] *See, e.g.*, *In the Matter of Federal-State Joint Board on Universal Service, N.E. Colorado Cellular, Inc., Petition for Waiver of Section 54.314(d) of the Commission's Rules*; CC Docket No. 96-45, *Order*, DA 03-2482 (rel. July 25, 2003) ("*N.E. Colorado Order*"); *In the Matter of Federal-State Joint Board on Universal Service, Guam Cellular and Paging, Inc., Petition for Waiver of Section 54.314 of the Commission's Rules and Regulations*, CC Docket No. 96-45, *Order*, DA 03-1169 (rel. Apr. 17, 2003) ("*Guam Cellular Order*"); *In the Matter of Federal-State Joint Board on Universal Service, RFB Cellular, Inc., Petition for Waiver of Section 53.314(d) and 54.307(c) of the Commission's Rules and Regulations*, CC Docket No. 96-45, *Order*, DA 02-3316 (rel. Dec. 4, 2002) ("*RFB Order*"); *Centennial Order*, *Grande Order*. *See also Report and Order*, ¶ 89 (noting that the Commission has granted waivers of certification filing deadlines).

[13] *N.E. Colorado Cellular Order*, ¶ 6; *Guam Cellular Order* ¶ 6; *RFB Order*, ¶ 8; *Centennial Order*, ¶ 8; *Grande Order*, ¶ 9.

[of the ETC…] justifies a waiver" and found that the loss of three months worth of universal service funding in similar circumstances would be "egregious."[14]

C. **The Limited Waiver Western Wireless Seeks is Consistent With the Spirit of the Commission's *Report and Order***

After Western Wireless's designation as an ETC in the Designated Areas, but before the Montana PSC certified Western Wireless' use of high-cost support to the Commission and USAC, the Commission released its March 17, 2005 *ETC Designation Framework Order* concerning various aspects of the ETC designation process. In the *ETC Designation Framework Order*, the Commission specifically noted that due to the timing of their ETC designation date, newly designated ETCs may be unable to comply with the certification filing deadlines.[15] The Commission further noted that in such a case, the ETC could "suffer significant delay in receipt of support."[16] As set forth herein, Western Wireless is in precisely the situation the Commission so aptly described and attempted to redress in the *ETC Designation Framework Order*.

The Commission took action in the *ETC Designation Framework Order* to remedy this problem. The *ETC Designation Framework Order* promulgates a series of new rules that provide that ETCs are eligible for support as of their ETC designation date, provided that the required certifications are filed within 60 days of the carrier's ETC designation date.[17] These rules will become effective 30 days after the publication of the *Report and Order* in the Federal Register.[18] Such publication has not yet occurred, and so the rules are not yet effective.

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[14] *In the Matter of Federal-State Joint Board on Universal Service, West Virginia Public Service Commission, Request for Waiver of State Certification Requirements for High-Cost Universal Service Support for Non-Rural Carriers*, CC Docket No. 96-45, *Order*, DA 01-86, ¶ 7 (rel. Mar. 13, 2001).

[15] *Report and Order*, ¶¶ 89, 91.

[16] *Id.*, ¶ 91.

[17] *Id.*, ¶ 92; new Commission rules 54.313(d)(3)(vi) and 54.314(d)(6).

[18] *Id.*, ¶ 109; 47 C.F.R. § 1.427(a).

Because of the timing of its ETC designation and the Montana PSC's certification, Western Wireless will not be able to take advantage of the new rules promulgated in the *ETC Designation Framework Order*– the Montana PSC's certification to the Commission and USAC was completed before the new rules will become effective. However, the new rules and the *ETC Designation Framework Order* provide additional support for Western Wireless' request that the Commission waive the certification deadlines of Section 54.313(d)(3). In the *ETC Designation Framework Order*, the Commission recognized the timing problems that have arisen with regard to ETC designation and remedied them; Western Wireless' requested waiver merely asks the Commission to do the same in Western Wireless' particular circumstance, given that the remedy adopted in the *ETC Designation Framework Order* was not yet available at the time this circumstance arose.

The Commission's precedent, the *ETC Designation Framework Order*, and the effect that timely receipt of federal universal service support will have on Western Wireless' provision of universal service in Montana all show that good cause exists for the Commission to waive the certification filing deadlines set forth in Sections 54.313(d)(3) so that Western Wireless may receive high-cost universal service support in Montana commencing January 1, 2005.

IV. CONCLUSION

For the foregoing reasons, the Commission should grant Western Wireless' request for waiver of the certification filing deadlines set forth in 47 C.F.R. § 54.313(d)(3) and accept the Montana PSC's March 21, 2005 certification of the Company's use of universal service support as timely filed for purposes of qualifying Western Wireless to begin receiving universal service support effective January 1, 2005.

Dated: May 18, 2005

Respectfully submitted,

WESTERN WIRELESS CORPORATION

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ATTORNEYS FOR WESTERN WIRELESS CORPORATION

<u>EXHIBIT A</u>

Montana PSC's Oct. 14, 2004 Order Designating Western Wireless as an ETC in Qwest Areas in Montana

Service Date: October 22, 2004

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF WWC HOLDING CO., Application for Designation as an Eligible Telecommunications Carrier in Montana Areas Served by Qwest Corporation	))))	UTILITY DIVISION DOCKET NO. D2003.1.14 ORDER NO. 6492a

FINAL ORDER

Introduction and Procedural Background

WWC Holding Co., Inc., d/b/a CellularOne (Western Wireless or WW) filed on January 29, 2003 its application for designation as an eligible telecommunications carrier (ETC). WW's filing was noticed on March 3, 2003 for intervention. Intervention was granted on April 2, 2003 to the Montana Consumer Counsel (MCC), Montana Telecommunications Association (MTA), Qwest and the Ronan Telephone Company (RTC). Intervention was granted on April 7, 2003 to Montana Independent Telecommunications Systems, Inc. (MITS). A Procedural Order (No. 6492) was issued on June 10, 2003. WW filed on July 24, 2003 a Motion to Dismiss MITS, MTA and RTC. WW also filed on July 24, 2003 an objection to a staff data request.[1] The PSC denied WW's Motion to Dismiss. The Procedural Schedule was amended on both November 25, 2003 and December 18, 2003. Qwest submitted on February 11, 2004 its Notice of Withdrawal from this proceeding. Pursuant to the February 27, 2004 Notice of Public Hearing, a hearing in this docket commenced on March 17, 2004.

WW and MCC were the only parties to file testimony in this docket. WW filed the initial testimony of Mr. Blundell after which the MCC filed Mr. Buckalew's testimony. WW's rebuttal includes the testimony of Mr. Blundell and Mr. Wood.

[1] WW objected to PSC -029(c) requesting a copy of WW's most recent FCC 499 report. This report contains the percentage interstate total revenue that is subject to a 28 percent safe harbor. (DR PSC -014(a))

Initial Western Wireless Testimony

Mr. James Blundell

Mr. Blundell's June 26, 2003 testimony first provides information about WW. WW is authorized by the FCC to provide commercial mobile radio services (CMRS) throughout areas of Montana and under the brand name of "CellularOne."[2] The CMRS services that WW provides include: data/FAX, 911, voice mail, and several other features and services. (p. 3) Prior to the current filing, WW withdrew its August 18, 1998 filing for ETC designation. WW's current petition seeks ETC designation in Qwest's service areas.[3] (p. 5)

WW contributes about 9 percent of its revenues to the funding of federal universal service but does not draw from the fund for the services it provides in Montana.[4] Absent access to Federal universal service funds (FUSFs) competitive carriers like WW are severely limited in their ability to provide competitive telecommunications service to consumers in high-cost areas served by Qwest. Unlike in urban areas, where carriers are able to compete "based upon the cost of providing service," carriers must be designated as ETCs and allowed "entry to the universal service market" in order for "rural high-cost areas" to experience the full benefits of competition.[5] (p. 4)

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[2] WW Corporation has several subsidiaries of which one, WWC Holding Co., Inc., conducts business in Montana. CellularOne is the brand name for WW's service. (DR PSC -011(a))

[3] WW asserts that like the "rural ILECs in Montana," it operates as a "rural operator," its customer base is entirely "rural consumers" and it requires access to universal service support in order to provide service in "rural areas." (DR PSC- 022(c), (d))

[4] WW will receive the same amount of explicit federal support per line that Qwest receives for each customer in each Qwest exchange. (PSC -012(a))

[5] WW asserts that the benefits and costs associated with designating WW an ETC are addressed in Blundell's testimony and that the impact on Qwest of WW's designation is irrelevant. WW adds that its designation is "critical" to its ability to serve the rural areas of Montana. (DR PSC -021) It is critical to the preservation and advancement of universal service that consumers have access to service offerings that best meet their needs in terms of pricing, service quality and technology. (DR PSC 030(b)) By "rural areas," WW means that the areas and customers are with respect to Qwest. (DR PSC - 030(c))

The balance of Blundell's testimony describes the federal standards for ETC designations, the services that WW will provide to meet those standards, and the service areas in which WW seeks ETC designation. His testimony explains why there is no public interest (PI) standard that WW must meet in order to be designated an ETC.

As for federal ETC standards, Blundell testifies that wireless carriers are eligible to be designated ETCs. There are eligible because the 1996 Act (Section 214(e)) provides for the designation of "all" carriers. The FCC also agrees with the Joint Board's analysis and recommendation that any telecommunications carrier using any technology, including wireless technology, is eligible to receive support under 214(e). He notes that PSCs in 13 other states have determined that WW meets the requirements of Section 214(e)(1). (pp. 6, 7)

Under Section 214(e)(2), a carrier meets the prerequisites to receive ETC designation if it: 1) is a common carrier, 2) offers the supported services throughout the designated service areas and 3) advertises the availability of the supported services throughout the designated service areas.[6] (pp. 7, 8) Blundell testifies that WW is a common carrier for purposes of ETC designation in Montana and that there are nine core services and functionalities that WW must offer. Those nine services include: voice-grade access, local usage, dual tone multi-frequency (DTMF) signaling or an equivalent, single-party service, toll limitation for qualifying low-income consumers and access to emergency, operator, interexchange and directory services.

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6 Once designated an ETC, WW will advertise its Lifeline and Link-Up services, including discounts. (DR PSC -001(b)) While WW has not finalized the calling plans that it will offer in Montana it describes the four tiers of discounts allowed under the FCC Lifeline program. (DR PSC -001(c), (d), (e)) Tier 1 entitles ETCs to reimbursement for the federal SLC that is on a customer's bill. Tier 2 entitles ETCs to further reduce a qualifying customer's bill by $1.75. Under Tier 3 a state may "match," as does Montana, the federal reductions by another $3.50. Therefore, if WW's service is initially $35 the rate to a Lifeline customer could be $21.50. Since "tribal residents" are entitled to an additional $25, a $1.00 floor rate applies. WW does not know how much of Qwest's wire centers overlap with tribal lands. (DR PSC -033(c)) The Lifeline rules support residential customers. (DR PSC -010)

WW will offer as follows each of the nine supported services. (pp. 9-13) It will offer "voice-grade access" within the 300 to 3000 hertz frequency range.[7] Until the FCC establishes a minimum local usage requirement, WW intends to offer "unlimited local usage as part of a universal service offering."[8] WW asserts that its use of "out-of-band" and "in-band multi-frequency" signaling meets the DTMF requirement. By offering a "dedicated message path" for the length of all customer calls WW states to satisfy the single-party service requirement. WW already provides access to 911 and it commits to work with public safety answering points (PSAPs) to make E911 available.[9] WW provides access to operator services either directly or through other entities. WW holds that although the FCC does not include "equal access" to interexchange carriers (IXC) among the services supported a carrier must still offer access to IXCs.[10] As for IXC access, WW asserts to provide all customers the ability to make and receive toll calls

[7] WW uses both analog and digital technology to transmit and receive mobile calls. With digital, it uses two different TDMA and CDMA platforms (time and code division multiplexing). (DR PSC -026(c))

[8] WW intends to comply with FCC requirements by offering unlimited local usage as part of at least one service offering. WW does not anticipate that it will offer Lifeline and residence/business customers "varying 'free-of-charge amounts'." (DR PSC -005(c), (d)) WW clarified that it intends to make service offerings available with different amounts of local usage.(DR PSC -026(b)) A customer's rate plan includes a predetermined amount of "free" minutes of use, whether that usage is for local or toll calls. (DR PSC -027(c)) The rate for calls in excess of the prescribed bucket of minutes is $.39/minute. (DR PSC -055(b)) WW expects that add-on features for vertical services will not be part of the basic service package. (PSC -022(a))

[9] E911 includes automatic number and location information (ANI and ALI). When WW receives a compliant request from a PSAP for E911 it will implement E911 pursuant to FCC requirements. A compliant PSAP must be able to receive and use automatic number and location identification -- ANI and ALI respectively. WW also distinguishes between Phase I and Phase II compliance, with the latter requiring GPS capability. (DR PSC - 007, and TR 155-158, 195) Whereas WW's service is GPS capable, the PSAPs are not all prepared to accommodate GPS services. (TR 216)

[10] WW will permit dial around toll calling. The minutes of use will be considered local calling minutes and will be deducted from the measured rate plan minutes. (DR PSC - 007(e)) WW would not respond to questions about requirements, such as equal access, that are not imposed per Section 332(c)(8). (TR 44, 149)

either by direct interconnection arrangements or by dialing an access code.[11] WW provides "directory assistance" (DA) access by way of "411" and "555-1212" dialing. WW is not required to offer "white pages directories and listings."[12] WW commits to provide, once designated an ETC, "toll blocking" and will, as required, participate in Lifeline, Link Up and "Tel-Assistance."[13]

Finally, WW will combine and offer the above supported services by means of a number of "universal service offerings."[14] (pp. 13-15) The offerings will include unlimited local usage and usage sensitive offerings by means of conventional mobile handsets and wireless local loop service. Blundell explains that wireless local loop service (WLLS) combines a wireless unit located at the customer's site with the nearest cell site.[15] WLLS is, however, marketed more as a residential service in competition

[11] Qwest had assessed WW a rate of $.09/MOU. Reverse billing was a subsidy offered to Qwest customers who dialed WW subscribers that was designed to eliminate barriers with land-to-mobile calling. (DR PSC -029(d)) Certain Qwest customers that call WW customers will now pay toll rates as such traffic is considered to be toll traffic. It is toll traffic because Qwest does not recognize its legal obligation to route land-to-mobile IntraMTA calls as local calls instead of toll calls. Qwest is the only LEC in Montana with whom WW has a wide area calling (WAC) "reverse billing arrangement." If, for example, Project Telephone has an EAS arrangement with Qwest, and if WW has local numbers in the Qwest rate center, then these numbers must be recognized as local numbers by both Project and Qwest under dialing parity requirements. Qwest previously indicated to WW its intent to eliminate WAC with implementation of wireless number portability. (DR PSC -015(a), (b), (e) and DR PSC -016(a), (b))

[12] WW states that unless white page directory listings are an imposed requirement a customer needs to contact WW and request to be listed. Upon request, WW will coordinate with the area's white page directory listing service. (DR PSC -048(d)) Blundell committed to provide white page listings if requested but did not explain how it chooses between alternative white page providers. (TR 32, 145)

[13] WW adds that whereas an ETC must provide toll blocking, the FCC no longer requires an ETC to provide "toll control." (DR PSC -009(a))

[14] WW intends to provide services using its own facilities. (DR PSC -002(b)) WW will resell service if, after making all necessary network changes, it is unable to respond to a reasonable request for service. (DR PSC -002(c)) However, WW has no apparent intent to resell Qwest services. (DR PSC -063(e))

[15] WW has 16 Montana customers that use a "wireless access unit" (WAU). WW provides this service at the same recurring and nonrecurring rates assessed mobile

with landline service offerings. The advantage of WLLS is that it allows WW to serve customers that may not otherwise be able to receive cellular service.[16] If a customer is outside WW's existing cellular signal coverage area, WW can meet "reasonable requests for service" by other means of a high-gain antenna, changing a cell site's power and by building new cell sites.

Blundell asserts that the FCC is not currently considering the appropriateness of designating wireless carriers as ETCs. Nor is there doubt that such designations are appropriate. (pp. 15, 16) WW agrees with the Joint Board that any wholesale exclusion of a class of carriers would be inconsistent with the goals of the 1996 Act.[17] WW holds that Section 332(c)(3)(A) does not allow states to deny a wireless carrier ETC status.

Blundell testifies that in order to meet the FCC's advertising requirement WW will advertise in full compliance with the FCC's ruling the availability of and the related charges for supported services (Section 69-3-840 M.C.A.).[18] (pp. 16, 17) WW will advertise through newspapers, television, radio, billboards and retail stores, and it will comply with all "form and content requirements" required by either the FCC or the PSC for all designated ETCs.

Blundell testifies that WW seeks ETC designation in certain of Qwest's Montana "wirecenters" within the Rural Service and Metropolitan Service Areas (RSA and MSA respectively) for which WW holds CMRS licenses (Blundell's Exh. A lists those service

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service. (DR PSC-049(a)(d)) A house phone is plugged into the WAU that also requires batteries. (TR 146) WW explains that the Tellular unit (a WAU) is activated the same as a mobile hand set...it plugs in just like a toaster ... and that the service can be provided within hours anywhere in Montana. (TR 252-253)

[16] The only difference between cellular wireless service and WLLS is the customer premise equipment (CPE). WW offers WLLS using CPE that simulates many wireline network features; customers, however, want cellular service and not a "telco-like service offering."(DR PSC -031) If, a customer cannot receive WW's service (signal) despite the fact that it is located within a wire center, the customer can always get WLLS.(TR 288)

[17] WW did not comment on whether other wireless carrier providers may be disadvantaged by designating WW as an ETC and it has no opinion on whether the PSC ought to also designate other wireless carriers. (DR PSC -047 (a), (b))

[18] WW asserts that the FCC's rules impose no requirement on the frequency or duration of advertisements. (DR PSC -001(a)) Also, the M.C.A. cite is a correction. (TR 21)

areas). (pp. 7, 17-20) He adds that the PSC has Section 214(e)(2) authority to establish universal service areas:

> *A State Commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph* (1) *as an eligible telecommunications carrier...*

Under section 214(e), service area is a geographic area established by a PSC. In the case of Qwest, the service area is the wire center. WW, however, does not seek ETC designation in Qwest wire centers unless it can meet its obligation to respond over time to reasonable requests for service. Using mapping software, WW's own radio frequency signal, and based on existing signal coverage and authorized cellular license areas, WW determined the extent to which each Qwest wire center is covered by WW and if coverage could be extended. WW analyzed whether its network could reach at least 85 percent of the population in each wire center. Although the FCC finds such designation appropriate WW will not seek designation as an ETC in "partial wirecenters."[19] WW adds that the FCC determined in a South Dakota case involving WW that to be designated an ETC ubiquitous coverage throughout a wire center is not required. (DR PSC -032(b),(c),(d)) WW commits, upon reasonable request, to extend its network to serve new customers.

Blundell testifies that before WW is designated an ETC the PSC is not required to find that the designation is in the PI.[20] (p. 20) Whereas the FCC has stated that nothing

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[19] WW's signal coverage in Montana extends to "all" Qwest wire centers identified in its application. WW adds that it includes Qwest wire centers within its designated service areas if 85 percent (the threshold) of the population in an area is able to be served by a signal level of at least -104 dBm (decibels per minute). (PSC -023(a) and TR 144) The FCC uses the -104 dBm standard in its licensing. (TR 278) With a 95 percent threshold WW would have inadequate coverage in 8 more exchanges. (DR PSC -051(e)) WW commits to serve all consumers who reside in a wire centers within its ETC service area, including those served off of remote switches. As interconnection agreements (IAs) permit the exchange of traffic, WW objects to questions on how its ETC petition relates to extended area service (EAS). (DR PSC -004) WW has traffic exchange arrangements with all carriers in Montana and it offered to negotiate with any Montana LEC under the terms of Section 252 and the FCC's rules. (DR PSC -008(c),(e)) Even if there was no interconnection agreement with 3 Rivers to exchange local traffic in Shelby, WW holds that such calls are still IntraMTA calls that should not be subject to access charges. (DR PSC -052(b))

[20] WW holds that the "plain language" of the 1996 Act does not apply a PI standard

in 214(e)(1) requires that a carrier be subject to PSC oversight, in order to be designated an ETC WW recognizes that the PSC will have continuing oversight to ensure it continues to meet the requirements of section 214(e) and 4 CCR 723-41-8 et seq.

Initial Montana Consumer Counsel Testimony

Mr. Allen Buckalew

The purpose of Mr. Buckalew's January 15, 2004 testimony is to analyze WW's request to be designated an ETC. He testifies that his analysis and recommendations apply to any wireline or wireless carrier that seeks ETC designation. He adds that the purpose of ETCs is to increase subscribership and not to make service better. (TR 301) That is, ETCs have a public service obligation to provide telephone service to those people that are without service: to increase penetration. (TR 297-299)

Buckalew testifies that ETCs are needed in order to provide to customers the nine services that they would not otherwise receive. (pp. 4-6) He testifies that the PSC has examined the possible "public benefits" derived from designating multiple ETCs and adds that multiple carriers will improve the competitiveness of local exchange markets.[21]

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when designating an ETC in an area served by a non-rural company. (PSC -003(a)) Even if the 1996 Act is assumed to impose such a requirement WW objects to the request of whether it is in the PI to designate it an ETC. (DR PSC -003(b)) WW does not hold that petitions for ETC designation must be addressed serially, adding that each application should be considered based upon its own merits. (DR PSC -003(d)) WW asserts that with the FCC's interpretation of the law there is no PI finding requirement for "non-rural" study areas. (DR PSC -025(a)) The PSC need only consider the "specific requirements of Section 214(e)(1)." (DR PSC 025(e)) WW further notes that PSCs are prevented from basing ETC designations upon PI considerations. (DR PSC-033) WW asserts that PSCs are expressly prohibited by Section 332(c)(3)(A) from imposing service quality rules upon CMRS carriers. (DR PSC -033(b)) WW notes, however, that the states of Oklahoma, Nebraska and Texas have imposed additional requirements on WW for federal USF support in areas served by non-rural carriers. (DR PSC -028(b))

[21] Although it has not undertaken a cost/benefit analysis to determine whether WW should be designated an ETC, the MCC holds that the PSC must determine if there are net benefits. The PSC must also determine whether designating more than one ETC in "rural areas" is in the PI. MCC adds that our elected representatives have decided that competition is in the PI. (DR PSC -034(c), (d)) The MCC acknowledges that with increased competition a LEC could lose revenue. (DR PSC -035(e)) Still, the MCC held that multiple carriers will significantly improve competition. (TR 312) The MCC also

(p. 5, lines 9-12) However, there may be neither competition nor market forces to drive down costs with only one carrier.[22] If WW shows that its application is in the PI and if it agrees to the conditions that he suggests would apply to all ETCs, he would designate WW as an ETC. He recites the nine supported services that ETCs must provide and the requirements in section 214(e) to designate ETCs in rural and in non-rural areas.

As there are no Montana rules for ETCs, Buckalew recites the MCC's prior recommendation to include in rules an annual "check-up" to ensure that ETCs undertake the Commission's universal service policy goals.[23] Existing ETCs should be assured continued ETC status if the check-up demonstrates that they are undertaking these policy goals. He lists five criteria that ETCs should initially, and on an annual basis, demonstrate to have met:[24]

1. An ETC must be willing and able, and must certify its commitment, to provide to any requesting customer's location within the designated service area the defined services supported by universal service;
2. Each ETC must show that it advertises the availability of such services and the charges;
3. An ETC must provide the services at not more than the Commission authorized maximum stand-alone rates for the defined basic local exchange telecommunications service, and must meet all service quality and provision rules established by the Commission for universal services;[25]

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held that in some cases it may be necessary to <u>not</u> promote competition. (TR 326)

[22] Buckalew does not, however, attribute much credibility to the contestable market theory; that theory holds that upon entry of a second firm, in addition to the incumbent, the market becomes competitive. (TR 403)

[23] With an annual check-up, the PSC would ensure that all rules are followed by each ETC every year. Any rule imposed on a wireline carrier must also apply to a wireless carrier; carriers must agree to the same standards before the PSC grants ETC status. Rules should be applied equally to rural and non-rural carriers. (DR PSC -036) WW holds that since 47 CFR Section 54.201 requires ETCs to meet the PI standards, an ETC failing to meet the standards established by the PSC can have its status revoked. (DR PSC -037(b)) MCC adds that if every requirement placed on other ETCs should be placed on WW, that the converse also holds. (DR PSC -041(c))

[24] Whereas PSCs are prohibited from regulating the rates of wireless carriers, PSCs are not prohibited from making requirements under the public interest standard. (TR 349)

[25] (As for rate caps, see the footnote associated with "5. e." below.) The MCC is unaware of differing but relevant service quality standards for wireless and wireline

4. Each ETC may satisfy its obligation to provide the defined services over a combination of its own facilities and resale (just not resale), and an ETC may provide the defined services, in part, by leasing of unbundled network elements (UNEs). The Commission may want to also define the qualifying minimum percentage of owned facilities and, or, leased UNEs.[26]
5. Each ETC must also show that its provision of service satisfies the PI by meeting the following six requirements (pp. 8-10):[27]

a. Every requirement, including the above five criteria, placed on ILEC ETCs should be placed on new ETCs.
b. Each ETC must designate the specific service areas it wishes to serve.[28]
c. ETCs must document that each line for which it seeks compensation the customer is a "new" (not served by the existing ETC) or a "former" ETC customer (not using ETC services). Customers that add wireless services to existing wireline services should not be compensated.[29]
d. Each ETC must file with the PSC and advertise after approval the exact ETC rates it offers for the service included in universal service in the ETC areas.[30] This requirement continues so long as the market is less than "workably competitive."[31] Advertisement plans should also be submitted.

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carriers that conform to 47 CFR 54.101. (DR PSC -041(d)) By "provision rules" Buckalew means the time allowed to provide service, line extensions etc. (TR 401) Buckalew did not recommend that his service quality requirements be imposed on all carriers as universal service involves a substitutability argument; in other words, land line service is being substituted for wireless service for universal service purposes. (TR 404)

[26] The MCC holds that if a carrier does not use at least 50% of its own facilities, its ETC designation should not be considered in the PI. (DR PSC -037(e))

[27] The MCC does not believe that the PI benefits of a third ETC depend upon whether that ETC is a wireless or wireline ETC. (DR PSC -042(a))

[28] Buckalew is troubled by the fact that WW's petition did not include all of Qwest's wire centers. He questions what will be achieved by designating a second ETC if the incumbent serves nearly all of the customers (e.g., a 98% penetration rate). (TR 367-370)

[29] MCC held that deployment of second lines is not a goal of universal service and should not be funded with universal service funds. (TR 336)

[30] MCC believes that it is essential for the Commission to see WW's actual universal service offering prior to approving WW's application. (TR 314) MCC adds that without offering a low-cost universal service option WW does not meet the goals for universal service funding. (TR 315)

[31] Market share data should be used. When no local exchange company's market share exceeds 30%, then the market is considered workably competitive. (DR PSC -038(e))

e. Until the PSC determines the ETC area "competitive" all ETCs must submit rates to the PSC for approval. All rates must be less than or equal to the PSC established rate for unlimited local exchange service and Lifeline service.[32] The PSC may investigate and determine the appropriate single-party residential and single-line business rates for Montana in a cost proceeding that uses the ILEC's existing rate.[33] The PSC may establish statewide rates for the purpose of determining universal service support levels or area-specific rates – maximum rates that an ETC may charge an end user customer for basic service or the supported basic local exchange telecommunications service.[34]
f. ETCs must have "Lifeline" and "Link Up" programs for low-income subscribers and rates on file in advance of its designation.[35] Regarding low income consumers, ETCs should adhere to the following (pp. 9-10):
    i. offer Lifeline and Link Up programs that are consistent with federal guidelines;
    ii. the PSC should determine a consumer's qualification for support[36];

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[32] As such, Buckalew holds that the Commission is not regulating WW's rates but is setting a rate cap. (TR 361) There should be no limit on free local calling available from a wireless ETC. (DR -042(b)) As for reconciling his rate limit (cap) proposal, Buckalew does not believe the Kansas "BUS" (WW Basic Universal Service program) was related but added that it should be briefed. (TR 397, 398) As for implementation and using the Qwest 1FR as an example, Buckalew testified that the appropriate cap could be $17, $25 or anything in between. (TR 400)

[33] The MCC suggests establishing a statewide average rate to use for USF purposes, especially if a state fund is ever implemented. (DR PSC -039(d))

[34] The MCC suggests setting a rate for local service that can be used for USF purposes if a state-specific fund is developed. (DR PSC -039(e)) This suggestion does not apply to the federal fund.(DR PSC -040(a)) The South Carolina PSC may have implemented such a proposal. (DR PSC -040(c))

[35] Lifeline service includes universal services and functionalities available to qualifying low-income consumers. The Link Up program reduces the installation and initiation service charges for low-income consumers. Buckalew agreed that the FCC's rules do not dictate any rate for Lifeline or Link Up assistance but rather provide for reimbursement of discounts or credits and that the Lifeline support credits apply against the lowest tariff rate of a local exchange carrier or the lowest generally available rates of carriers who are not required to file tariffs. (TR 354) If a PSC establishes eligibility criteria for Lifeline and Link Up, then the state has to provide a level of state support, Tier 3 matching support, as part of the Lifeline credits. (TR 355) Buckalew contends that Lifeline and Link Up is part of a public interest analysis. (TR 357)

[36] By "consumer's qualification for support," Buckalew means that everyone will not qualify for Link Up services. (TR 405)

iii. qualifying consumers should be able to select any ETC; and,
iv. Lifeline subscribers must not be allowed service from more than one ETC.[37]

As a continuing PI requirement, Buckalew would require all ETCs to submit to the PSC information on fund use that shows the amount of funds received and to explain how those funds were used to support specific universal services.[38] (p. 10) Fund use information would include: 1) total funds received, 2) revenue received from benefited (basic and Lifeline) customers, 3) costs and expenses for specific universal services and 4) how the funds were applied. He also asserts that WW must provide the exact wire center geographic boundaries for which it provides service. (DR PSC -038(c))

Consistent with federal rules, Buckalew's summary recommendations include: (1) that every requirement placed on other ETCs should be placed on WW. (pp. 11-13) However, the same "general waivers," such as the toll limitation waiver, if needed, should apply to WW. The same quality of service standards and reports need to be filed by any designated ETC; (2) an ETC must designate the specific local service areas it wishes to serve with any necessary details on why complete coverage is not offered; (3) the ETC must provide the number of lines it captured from the ILEC and, upon request, must demonstrate whether each customer is a "former" ILEC customer or a "new" customer;[39] (4) until competition exists in an area each ETC must submit its rates to the PSC as well as its plans to advertise service and (5) Lifeline and Link Up programs must

[37] As universal service is not defined as multiple access to the PSTN, there is no reason for telephone customers to support several lines or companies. (DR PSC -041(a)) Per FCC rules, there would be only one Link Up program for one location. (TR 405)

[38] Buckalew held that, even though it is a post-designation requirement, the annual certification process is part and parcel of the public interest and is a requirement. (TR 358)

[39] The FCC rules (47 CFR Section 54.307) limit a CETC's compensation to when it captures an ILEC's line or serves a new customer. (DR PSC -036(a)) Buckalew does not believe that each cell phone ought to be considered "new" and adds that whether it is depends on whether it is the "primary" service. (TR 376) Consistent with the rules, if a new customer initially selects wireless service but then decides to add (not substitute) wireline service, then the MCC holds that the wireline service should qualify for support. (TR 377)

be established for low-income subscribers and the rates must be filed with the PSC prior to an ETC designation.

Buckalew concludes that since WW has not demonstrated that its application is in the PI, WW should not be designated an ETC. If WW agreed to follow all of the rules that the Commission establishes, and if its designation were in the PI, then WW should be designated an ETC.[40] (TR 312) Until WW indicates its commitment to comply with rules that the Commission establishes WW does not deserve ETC funding. (TR 324, 342) Ideally, however, there should be no designation of competitive ETCs before the rules are in place and the rules would be part and parcel of the public interest inquiry; that is, this docket would be suspended. (TR 343, 345, 366) As a matter of policy, Buckalew agreed that the universal service subsidy is close to having outlived its usefulness and he questions whether subscribership would decrease in its absence. He also questions what ought to be the target saturation point for telephone service. (TR 372-374) Buckalew does not object to an interim ETC designation pending the resolution of rules. During the interim, the PSC should not stay or revoke ETC designations. Once the rules are completed, a designated ETC's compliance with the rules would become part of the annual certification process. (TR 405, 406)

Rebuttal Testimony of Western Wireless

Mr. James Blundell

Blundell's rebuttal testimony of February 19, 2004 makes three points. First, the MCC does not dispute that WW meets all federal standards to be designated an ETC. Second, he finds legally improper the MCC's testimony that the PSC must make an affirmative PI finding. He adds that the PI standard "applies only" to rural telephone companies. He finds that designating WW as an ETC would serve the PI. He also finds legally improper the MCC's testimony that holds that the PI requires WW to comply with requirements imposed upon ILECs and that WW must offer rates approved by the PSC. Third, he finds the MCC's recommendations concerning PSC oversight to be inconsistent

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[40] Buckalew testified that the essence of the PI is simply that the goal of universal service is to extend the network to those that do not have service. (TR 371)

with Montana statutory authority and prior PSC conclusions. As the MCC does not dispute that WW satisfies the requirements for WW to be designated an ETC, as outlined in WW's initial testimony, and it does not challenge the service areas in which WW seeks to be designated, the PSC should find that WW meets these requirements. (p. 3)

Blundell addresses the relevance of the PI to WW's petition. First, he disagrees with the MCC's assertion that the PSC must make an affirmative finding that WW's designation serves the PI.[41] He disagrees as the PI requirement applies only in rural company areas.[42] In acknowledging the FCC's recent PI determination, involving Virginia Cellular, he testifies that the FCC did not necessarily hold or mandate that a PI finding must be made by a state PSC.[43] He acknowledged that the FCC provided PSCs additional guidance to determine if designations are in the PI.

Blundell is confident that WW's designation would serve the PI as it would bring competition to "rural, high-cost areas." This, he adds, is consistent with one underlying purpose of the 1996 Act which is to promote competition. He asserts that the PI standard in 214(e)(2) emphasizes competition and consumer benefits and not protection of the incumbent. Failure to designate WW as an ETC would deprive consumers of competitive benefits, including "new and exciting" services for Montana's rural consumers. In addition to the benefits of efficiency, better service quality, immediate service and innovation, by offering "universal services" rural consumers will benefit from having mobile service in expanded local calling areas and may experience lower rates due to competitive forces.[44] WW is a key provider of service to low-income and high cost

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41 WW holds that application of the PI standard, while not mandated, is not allowed. Thus, it is inconsistent with the 1996 Act for a PSC to consider the PI in the context of a non-rural carrier. (DR PSC -054(c))

42 Blundell holds that it is unlawful for the Commission to deny an application in a non-rural telephone company area based on a PI test. (TR 26)

43 In light of the Virginia Cellular decision and the Federal-State Joint Board's recent Recommended Decision, WW holds that FCC policy has for years remained consistent and has found that designation of wireless carriers is in the PI. (DR PSC -058(d))

44 WW asserts that there is no relationship between the MTA and WW's calling plans. (DR PSC -013(b)) WW adds that the FCC is responsible for overseeing consumer complaints with respect to CMRS and WW does not maintain historical information

consumers in the 13 states in which it is designated an ETC and its calling plans are comparable to those available from national carriers operating in urban areas. Just as the Wyoming and North Dakota PSCs have also found WW's designation to be in the PI, the Montana PSC should enter similar findings.

Blundell disagrees with the MCC that the PI requires all ETCs to be subject to "all of the same rules." He disagrees as the requirement is contrary to the FCC's principle of competitive neutrality.[45] Neutrality means that rules must be neutral with respect to the technology and regulatory status of a carrier. So long as a common carrier commits to offer and advertise the nine supported services it meets the criteria to be designated an ETC. MCC's testimony on regulatory parity, that all ETCs must follow the same rules, is directly contrary to the FCC's notion of competitive neutrality. The FCC allows a carrier that is not subject to full state regulation to be designated an ETC. Regulatory parity does not advance the goals of universal service. Blundell adds that because the MCC did not testify that Qwest should be subject to the federal rules that govern the provision of CMRS, WW would be subject to greater regulatory burdens than is Qwest. (pp. 10-11). As the FCC does not require an ETC applicant to describe in detail its plans, the PSC need not approve, as MCC proposes, all of WW's rate plans. Since rate regulation of WW's offerings is preempted by federal law, it is unnecessary to impose ILEC regulations on wireless carriers in order to advance federal universal service goals in Montana (47 U.S.C. §332(c)(3)).

In regard to service quality, Blundell testifies that because of the high level of competition the wireless industry is different from traditional telecommunications services. (p. 12) He adds that WW is committed to provide high quality service. He also

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related to customer complaints. (DR PSC -019(a)) WW explains elsewhere that there is "no relationship" between its calling plans and Qwest's exchange boundaries. (DR PSC 028(d)) See response to DR PSC -053 for an expansion on the benefits of efficiency, innovation and pricing. See PSC -054(d), (e) on benefits and costs and DR PSC -057(d) on the dimensions of WW's "service quality" metrics.

[45] When asked where in Section 214(e) "competitive neutrality" is a consideration when designating ETCs, WW referred to the FCC's rules identifying competitive neutrality as a guiding principle. (DR PSC -047(e)) WW does not find that "competitive neutrality" is essential to the designation of ETCs. (DR PSC -056(d)) Blundell adds that all ETC's should not be regulated alike as "ETC" is not a class of carrier. (TR 31)

adds the WW is a voluntary signatory to the CTIA (Competitive Telecommunications and Internet Association) "Consumer Code" for wireless carriers.[46]

Blundell holds that if WW satisfies both 214(e)(1) and the FCC's regulations, that the PSC may not impose other inapplicable regulations §69-3-840 M.C.A.. (pp. 13-14) He testifies that the PSC does not have legal authority to impose any requirements beyond those in federal laws. He also cites a prior order wherein the PSC recognized the limits of its authority.[47] He adds that although Co-ops are otherwise exempt from PSC regulation, the PSC will have continuing 214(e) oversight over ETCs. (p. 14) He appears to agree that the PSC may, after designating an ETC, later reverse that designation. (DR PSC -053(c)) He is less clear on whether the PSC can apply changed criteria to both previously and to prospectively designated ETCs. (DR PSC -053(d))

As for the reporting and funding of universal service lines, Blundell testifies that the MCC has a fundamentally misunderstanding.(p. 15) The FCC is clear that both ILECs and CETCs will receive funding for all lines that they serve in a given area. He adds that the FCC's rules and orders do not state that a CETC is only entitled to funding of lines no longer served by an ILEC.

As for how ETCs use federal universal service funds, Blundell notes that the FCC's rules provide for a certification mechanism. To address the MCC concern that WW designate the specific local service areas (wire center boundaries) it wishes to serve, that WW detail the existing ETC area it is covering and that it explain why complete coverage is not offered, he provides a map (Exh. C). (p. 17)

Mr. Don Wood

Mr. Wood's February 19, 2004 testimony rebuts the MCC's initial testimony. He testifies that the only relevant question is whether WW commits to offer and advertise the

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[46] WW commits to respond within 30 days to PSC consumer complaints that are forwarded to WW. WW asserts that Virginia Wireless satisfied the FCC's service quality decision when Virginia Wireless agreed to committing to comply with the CTIA consumer code (TR 255-256, 291)

[47] This December 16, 1997 Order: 1) recites eight requirements in order to be designated an ETC, 2) describes a self-certification process and 3) notes where the FCC prohibited state PSCs from imposing additional prerequisites to be designated an ETC. (Order

nine supported services in the proposed service area. Therefore, the purpose is not to address whether the introduction of competition for basic telecommunications services in "rural" areas is in the PI.[48] (p. 4) Because WW seeks only to serve non-rural areas, the law requires no PI analysis. With respect to the Virginia Cellular petition, he adds that the FCC's PI analysis of non-rural areas differs from the analysis it performed for rural areas. For non-rural areas the "public interest, convenience and necessity" standard is met because of the high quality service that Virginia Cellular provides.[49] (p. 5)

Wood testifies that designating WW an ETC will in both the short term and in the long term benefit end users. The short-term benefits of competitive entry include lower prices, new services, different technology and supplier diversity. Wood agrees with the MCC that: "...alternatives to the LEC, that is, viable CLECs and wireless carriers, need to exist in each exchange area for competition to work for all Montanans." (p. 6) He recites the FCC's conclusion that entry by an ETC into a rural area can create more specific benefits such as providing "...incentives to the incumbent to implement new operating efficiencies, lower prices and offer better service..." He asserts that the FCC finds "no merit" in arguments that designating an additional ETC in a rural area will reduce an ILEC's investment incentives, increase its prices or reduce service quality. (p. 6)[50]

6005(a), Pacific Telecom Inc., D96.2.18, finding of fact No. 6)

48 Wood clarifies that each reference to "rural" area is a reference to the rural areas that Qwest serves. (DR PSC –059(b); however, see TR 66-68) As for where Section 214(e) requires consideration of competitive benefits, Wood responds that implicit in the analysis of whether the PI is satisfied is a determination of whether competition benefits consumers.(DR PSC –059(c)) He adds that PSCs recognize the benefits of competition as one component of satisfying the PI test.

49 Wood finds the FCC's finding, in the context of non-rural carriers, contrary to Section 214(e) even though the FCC designated the carrier as an ETC. (DR PSC 059(a)) Nor has the FCC explained what incremental analysis associates with the "convenience and necessity" requirements that are in addition to the "public interest" requirement in the Section 214(e) requirement that designations be consistent with the "public interest, convenience and necessity." (DR PSC -065(e))

50 See, however, the FCC's Virginia Cellular Order (paragraphs 34 and 35) that WW doubts can be imposed. (TR 172)

According to Wood, the long-term economic benefits of competition are a potential gain for rural consumers and for rural economic development.[51] The long-term economic benefits of competition in a rural area that the FCC identified include: customer choice, innovative services and new technologies, added incentives for the incumbent rural telephone companies to improve their existing network to remain competitive, new operating efficiencies, lower prices and improved service quality. (p. 7, lines 1-12)

Wood testified to have direct experience with the impact of competitive entry in rural areas. He adds that because of both rural economic development and the availability of affordable and high quality service, it is extremely important for health and safety reasons that competitive entry occurs in rural areas. (pp. 7-8)

Wood also testified that WW commits to offer and advertise the nine supported services and that WW's services will provide benefits to consumers. There is no fact or issue specific to WW or the service area within which it seeks ETC status in Montana that would outweigh those benefits. (p. 9, lines 4-9) He finds irrelevant the requests that LECs made, to weigh the benefits and costs of competitive entry for low line density rural areas, of regulators in other state proceedings.

According to Wood, the PI regards the interests of consumers. (p. 9, lines 18-19) He adds that consistent with the FCC's principle of "competitive neutrality," the interests of individual carriers or categories of carriers are not significant to a PI determination. In this regard, he cites the 5th Circuit Court of Appeal's Alenco decision and holds that the FCC and the court both make clear that the purpose of the federal USF is to protect rural consumers of telecommunications services and not to protect ILECs (pp. 9-10).[52]

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[51] WW made no estimate of the economic development benefits that would arise from WW's designation (DR PSC –059(e))

[52] The Alenco Communications v. FCC decision cited in the Fourteenth Report in part states: *The Act does not guarantee all local telephone service providers a sufficient return on investment; quite the contrary, it is intended to introduce competition into the market...The Act only promises universal service, and that is a goal that requires sufficient funding of customers, not providers...* As for competitive neutrality, WW does <u>not</u> support providing USF to all wireless carriers operating in the areas in which WW seeks ETC designation; only carriers that seek ETC designation and meet the requirements should have access to such funding. (DR PSC -060(d),(e)) The FCC

Wood advises the PSC to be watchful for efforts by LECs in rural areas to re-litigate FCC decisions regarding the federal universal service mechanism. (p.10, lines 11-17) He concludes that even if the PSC applied a more rigorous standard than the FCC applied in the non-rural areas of Virginia, the designation of WW as an ETC is in the PI.[53] (p. 10)

Despite the absence of any PSC rules for ETCs in Montana Wood testifies that the PSC should not create rules as the MCC suggests. This recommendation is based on the USAC's authority to conduct audits to ensure that ETCs appropriately use federal funds. In addition, the PSC already has certification authority over how USF support that makes additional requirements unnecessary.[54] (p. 11)

Wood disagrees with how the MCC would subject both WW and ILECs to the same requirements. He disagrees as the requirements would duplicate federal standards and competitive marketplace constraints would favor incumbents over new entrants. Thus, the requirements are not competitively neutral. (pp.12-13) As WW commits to meet all legal requirements, further requirements are not needed. Whether WW should offer services not required by the FCC or the PSC is not relevant. (p. 12, lines 13-15) Whereas the MCC's position appears based upon the notion of "regulatory parity" (correction, TR 162), in reference to the MCC's recommended annual checkup and the six additional requirements, Wood holds that the effect is to require of CETCs the same quality and scope of service required of the ILEC.[55] Due to entry barriers, Wood holds that the MCC's requirements would create no public benefit. (p. 13, line 5) He reminds

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reference is to CC Docket No. 96-45, FCC 97-157, In the Matter of the Federal-State Joint Board on Universal Service, May 8, 1997 (paragraphs 43-55). (DR PSC -061(a))

[53] WW holds that given the ability of ILECs to disaggregate USF, the Virginia Cellular Order may be inconsistent with the findings of both the FCC and the Fifth Circuit Court. (DR PSC-062(e)) WW adds that the FCC's Virginia Cellular order may be inconsistent with both prior FCC findings and the 5th Circuit's findings. (TR 222-225)

[54] Certification may be audited by USAC. (TR 170)

[55] Even if service quality standards were established for ETCs, WW holds that for competitive neutrality reasons they should only apply to common carriers that are designated ETCs. (DR PSC -064(b))

the PSC of the history of carrier regulation in making PI determinations. The constraints imposed on ILECs exist because of their former "monopoly" position and not because they are ETCs. The ILECs unique position of having built out networks, with no competition, inspired the FCC to enact standards that require maximum quality services from ILECs.[56] (p. 13, lines 10-15)

Wood notes that the FCC's principle of competitive neutrality does not mean that ETCs must be treated identically. Rather, the process of qualifying for and receiving universal service support must be competitively neutral. (p.13, lines 15-18) The prior amount of support received and the existing level of market power justifies some disparity. In this regard, he testifies that some disparity in regulatory treatment would uphold the intent of competitive neutrality by creating equal footing for the ILECs and competitors.

Wood testifies that the MCC's additional requirements would pose entry barriers for WW. (p.14) He also disagrees with the MCC's proposal to withhold designating WW an ETC until WW demonstrates that it will achieve its service quality objectives. (p. 16, lines 10-25) Entry would be impossible if before ETC designation a carrier must meet the service area and quality standards and efforts to "*buildout*" services would be thwarted. Wood adds that customers will dictate WW's service quality standards by choosing whether or not to subscribe to WW's services. (p. 14) The competitive market creates constraints that render service quality a moot issue for the same reason that "affordability" is moot -- because they are important to customers. (p. 16, lines 21-24)

Wood testifies that a CETC must offer service, as the MCC suggests, at or below an ILEC's rates. (p. 15) He disagrees as a "cap" on rates limits a carrier's ability to provide important consumer benefits, if it could provide service at all.[57] He adds that "the ILECs, in these cases, argue that all ETCs must offer 'stripped-down' services

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[56] By "maximum quality services," Wood means the FCC acknowledged that service quality requirements are directly impacted by the length of time that an ETC receives USF. (DR PSC -062(d))

[57] The losses are not limited to the welfare loss that results from capping the price below the customer's willingness to pay. (DR PSC -63(c)) The primary loss is that WW's offering represents a different market basket of features and capabilities.

identical in structure to the ILEC's basic local services..." In addition, in Blundell's testimony WW agreed to offer Lifeline services. He also asserts that a straight across-the-board comparison of rates is not meaningful. It is not meaningful because of different functionality, such as mobility, and different rate structures, such as flat-rated long distance. Wireless is a different service requiring different pricing.[58] (p. 16) Wood testifies that two of the main benefits of wireless service are its "mobility" and its flat-rated long distance service.[59] Wood asserts, again, that rate issues should be market driven as contemplated by the FCC, and not PSC decided. (p. 16, lines 2-9) He holds that the FCC's both basing and making support available on a "per-line basis" to CETCs creates a dynamic by which the marketplace sorts out issues. (p. 17, lines 3-10)

Finally, Wood disagrees with the MCC's proposal to require ETCs to provide documentation that demonstrates for each line for which the ETC seeks compensation that the line is either a new line or a former ILEC line. He finds such a requirement both unnecessary and contrary to the PI. (pp. 17-18) In addition, portability eliminates the barrier making substitution of wireless for wire line more likely.[60] (pp. 17-18)

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58 WW did not analyze the benefits of mobility and instead relies on customers to make such estimates. (DR PSC -064(a))

59 Wood adds that although wireless service is near comparable to wireline service in terms of voice clarity, data transmission capability and other quality measures, wireline service cannot offer mobility. (Footnote # 6, page 15) Wood adds that if the PSC looks at the public interest, then "mobility" and scope of coverage are additional considerations; however, Wood raised a health and safety concern that involves driving while communicating by means of a wireless phone. (TR 196)

60 WW did not provide information on whether wireless service substitutes for wireline service. (TR 155) Whether wireless substitutes for wire line service is entirely a customer's decision. (DR PSC -018(a)) WW has no data on the impact that its entry has on pricing, including service quality of Qwest's service offerings. (DR PSC -018(c), (d)) WW agrees that the major barrier to substitutability is that wireless cannot provide equivalent high capacity service. (TR 210-211) WW also notes that number portability is the largest barrier to people substituting wireless for wireline service. (TR 207-208) A secondary reason for the lack of substitution is demographics – younger people use wireless and do not take wireline service. (TR 209) The MCC held that it is hard to say whether wireless service supplants or complement wireline service. (TR 402)

Findings of Fact and Commission Decision

The parties have polarized views on whether the Commission should grant, and under what conditions it should grant, WW's ETC petition. WW would limit the Commission's public interest review to whether WW satisfies the Section 214(e) requirements. MCC, MITS and MTA all opposed WW's ETC designation petition. Prior to designation they would impose upon WW additional requirements.

The Commission has previously granted the petitions of other carriers for designation as an ETC in Qwest's non-rural service areas. Those prior decisions do not impose constraints and are not a precedent for this WW decision; and, no party opposed any of those prior ETC designations. The Commission's decision in this docket shall not necessarily set a precedent for how the Commission may decide any future ETC petition. Each ETC petition for designation will be determined on its own merits. As explained in detail later once the Commission's rulemaking on ETC standards is complete those rules will largely guide the decision making process involving both past and prospective ETC designations and annual certifications. In the following the Commission will explain both why it grants WW's ETC designation petition and the conditions by which the petition is granted

The Commission finds merit in granting WW's petition for a combination of reasons. First, WW appears to have satisfied the minimal Federal requirements that are set forth in Section 214 of the 1996 Act. Whether WW satisfies all relevant requirements will depend, in part, on WW's ongoing compliance with the additional conditions set forth in this order. Second, the rulemaking proceeding will establish additional public interest standards and requirements with which all ETCs must comply. WW will have an opportunity, once those rules are established, to demonstrate its compliance. In this regard, consideration of whether WW complies with those rules will not differ from how the Commission evaluates the ongoing compliance of other previously designated and prospectively designated ETCs. The ETC rulemaking is underway and the Commission is hopeful that it will be completed later this year. Third, the public interest standard appears, by construction of Section 214 of the 1996 Act, less stringent for non-rural carriers than it is for rural carriers. The Commission also finds that a more rigorous evaluation is called for in the case of ETC petitions in the areas served by rural carriers.

The Commission's rules will establish appropriate additional requirements for rural and non-rural carriers. Last, the Commission finds that Qwest's apparent lack of concern in this docket, manifested by its intervention and subsequent withdrawal, suggests that WW's designation will not jeopardize Qwest's financial well-being. For these reasons the Commission finds that WW may be designated an ETC for those wire centers contained in its petition. WW must, however, satisfy certain other requirements as discussed in the following findings.

Public Interest The public interest requires of the Commission a thorough review of whether WW complies with both the requirements set forth in Section 214 of the 1996 Act and with any additional requirements that the Commission establishes either in this order and later in its rules. The Commission has authority to establish such requirements, and it chooses to exercise that authority beginning with this docket.[61] While these additional requirements were not applied previously to ETC designation petitions they are obligations with which ETC's must comply on a going forward basis. The ETC issues have been fully fleshed out in this highly contested case. The Commission sets forth those requirements with which WW must comply as a condition of receiving ETC status and will defer until the completion of the on-going ETC rulemaking any other obligations that will apply to all ETCs.

Coverage Obligation In its petition, WW seeks to be designated an ETC for a majority of Qwest's wire centers. WW lists those Qwest wire centers for which it seeks and does not seek ETC designation (Late Filed Exhibits No. 6 and 7). WW's apparent threshold for seeking ETC designation in Qwest wire centers stems from its ability to

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[61] See generally the MCC's Initial April 30, 2004 Brief (at page 7) citing TOPUC v. FCC. In its Virginia Cellular Order (FCC 03-338, CC Docket No. 96-45, Released January 22, 2004) the FCC asserts: "*We do not believe that designation of an additional ETC in a non-rural telephone company's study area based merely upon a showing that the requesting carrier complies with section 214(e)(1) of the Act will necessarily be consistent with the public interest in every instance... We further note that the Joint Board is reviewing whether to modify the pubic interest analysis used to designate ETCs in both rural and on-rural carrier study areas under section 214(e) of the Act. The outcome of that proceeding could impact the Commission's public interest analysis for future ETC designations in non-rural telephone company service areas.*" (para 27, emphasis added)

offer service to at least 85 percent of a wire center's population.[62] In granting WW's petition, WW must improve upon its minimal 85 percent coverage.[63]

Qwest's wire centers include the base rate area and the abutting three zonal areas, including suburban and locality rate areas, that surround the base rate area of each wire center. For each Qwest wire center for which WW is designated an ETC, WW must achieve the capability to serve 98 percent of Qwest's customers in each wire center.[64] Whereas the Commission's rules will also address the time allowed for designated ETC's to achieve the capability to serve 98 percent of Qwest's customers in each wire center, WW shall have one year from the time it begins receiving Federal universal service funds pursuant to this order to complete its network upgrades. At the end of the year WW must document its ability to offer services to 98 percent of each wire center's customer base.

Although the Commission will not at this time require WW to provide coverage to 98 percent of Qwest's Montana study area WW's unwillingness to do so reflects upon its apparent self interest in cream skimming lucrative wire centers (WW's minimal coverage of 85 percent of wire centers also appears a case of cream skimming). It also reflects upon WW's inability, as wireless technology carrier, to assume the obligations that Qwest assumes and fulfills as the ILEC. This is a concern to the Commission given the dynamics of telecommunications markets and the yet-to-be scrutinized financial

[62] WW asserts to need universal service funds (USF) to build out its network. WW adds that it will extend its network to serve "new customers upon reasonable request." (Initial Brief, p. 16; TR 48, 50) WW would not commit to expanding service to communities for which it has not petitioned for ETC designation. (TR 96-96) WW will use universal service fund receipts to expand its network to serve the remaining yet to be served 15 percent. (TR 283)

[63] Because WW chose the wire centers for which it seeks ETC designation based upon its ability to serve 85 percent or more of a wire center's population, it was asked to provide wire center maps that used to determine whether it met the 85 percent threshold. WW responded that no wire center level maps exist. (TR 141) WW adds that it superimposes data of its coverage on wire center boundaries and the population in its analysis, what it labels geocoding. (TR 142, 143, 151) The wire centers for which WW is designated an ETC include all "zone" areas outside the base rate area. (TR 280) If, a customer cannot receive WW's service (signal) despite the fact that it is located within a wire center (e.g., the other 15 percent), the customer can always get wireless local loop service. (TR 288)

[64] The MCC's first criteria requires an ETC to certify its commitment to provide to any

resources and commitment and ability of carriers that have or that seek ETC status. Therefore, the Commission requires that WW file status reports at six month intervals that review WW's progress in serving the entire population of each wire center for which it is an ETC. These reports must provide the capital budget for prospective buildout plans and describe the buildout that WW actually achieved (deployed) in the prior six months. Failure to provide these reports or to achieve the goal of serving 98 percent of each wire center's population, for which WW is designated an ETC, will result in measures taken to decertify WW as an ETC.

WW explained how it may expand its coverage and enhance service quality. These options include use of the Tellular, wireless access, unit. (TR 252-253) Alternative means by which WW may expand its coverage and enhance its quality include adding towers and by enhancements to the transmission capability of its existing towers.

The Commission finds that WW must by means of its own resources serve all reasonable requests for wireless service at residences and businesses in each wire center. WW may choose the means by which it fulfills this obligation but it shall be, in the first instance, WW's responsibility, not that of its customers, to provide coverage of each wire center at the minimal -104dBm (decibels per milliWatt) service standard.

WW must provide maps of its actual signal coverage capability. It must begin providing such information within 30 days of the issuance of a final order in this docket and at 90 day intervals thereafter until it achieves 100 percent coverage. On each wire center map WW must overlay maps of its coverage capability based upon the –dBm standard.

Service Quality Monitoring The Commission will monitor WW's ability to provide service. WW must report to the Commission requests for wireless service that it was unable to satisfy. WW must report the number of unsatisfied requests regardless of how those requests were communicated to WW (e.g., voice, email, or letter). The Commission requires these reports to detail by location in each wire center for which WW is designated an ETC its inability to serve customers. The reports must provide a detailed description of why customer requests for service could not be satisfied. WW must file such reports on a quarterly basis for as long as WW is designated an ETC.

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requesting "customer's location within the designated service area the defined services."

WW must also document and report to the Commission on the customer complaints that it receives.[65] For each wire center for which WW is designated an ETC WW must record the complaints that it receives from customers, identify the nature of the complaint (e.g., poor transmission, dropped calls, busy signals) and identify the remedy employed to address each complaint. Based upon these records it must be possible to map the complaints to addresses within each wire center. If repeat complaints are received, then a record of such repeat complaints must be maintained. The results of the complaint records must be supplied to the Commission on a quarterly basis. The customer complaints reporting requirement pertains to WW's provision of service only at the addresses of both residential and business subscribers in exchanges for which WW is designated an ETC. This requirement is limited to addresses as the quality of WW's mobile service is irrelevant to its petition for ETC designation.

Federal Universal Service Fund The Commission finds that in conjunction with being designated an ETC, WW must report to the Commission the Federal universal service funds including Lifeline and Link Up credits that it receives. The reports must be filed quarterly for each wire center in which WW is designated an ETC. As WW's petition is strictly for Cellular service, prior to WW's seeking Federal universal service support for customers served by means of other than Cellular technology (e.g., PCS) WW must file with the Commission a statement of such intent.

Service Package As long as WW is designated an ETC it must have on file with the Commission a copy of each rate plan that it offers and for which it may receive Federal universal service support. Each plan must include the rates, terms and conditions of service. The Commission shall establish in rules any necessary rate caps and terms for unlimited service (minutes of use). WW will have to comply with those and other rules once codified.

Lifeline Upon compliance with the requirements in this order WW must file with the USAC (Universal Service Administration Company) its demonstration that its Lifeline plan complies with the FCC's rules. Once the USAC certifies that WW's plan is

[65] Although WW did not previously keep records of complaints Virginia Cellular agreed to provide the FCC on an annual basis the number of consumer complaints (FCC 03-338, CC Docket 96-45, Released January 22, 2004.

compliant with the FCC's rules Lifeline assistance will be available to qualifying low-income consumers served by WW.

Fund Size and Funded Lines The Commission is concerned about the size of the Federal universal service fund. The FCC expressed heightened concern about the size of the Federal fund.[66] The heightened concern of the FCC's is shared by this Commission. There is a real risk that if the Federal fund's size continues along its recent growth path, legislation could be enacted to limit the fund's size. Any such legislation could damage the ability of carriers to operate, maintain and expand networks that serve to achieve the universal service principles set forth in §254(b). These concerns are, however, being addressed at the Federal level by both the FCC and the Federal-State Joint Board. For that reason, the Commission also finds the MCC's testimony on how to interpret what "new" and "former" subscribers are (FCC Rules, Section 54.307) is an issue that is more appropriately resolved by the FCC. The FCC's recent NPRM (CC 96-45, Released June 8, 2004)[67] has as one issue the concern raised here by the MCC. Therefore, it appears to the Commission unnecessary to address how to interpret the FCC's rules on new and captured customers in this docket.

A related issue regards the merit of basing support on primary lines. The Commission opposes policies that limit support to primary lines, which is essentially a "voucher" system. The Commission filed comments with the FCC in opposition to the primary line policy.[68] In its comments, the Commission expressed concern with how a

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[66] In its Virginia Cellular Order (FCC 03-338, CC Docket No. 96-45, Released January 22, 2004) the FCC asserts: "*Although we find that grant of this ETC designation will not dramatically burden the universal service fund, we are increasingly concerned about the impact on the universal service fund due to the rapid growth in high-cost support distributed to competitive ETCs... We note that the outcome of the Commission's pending proceeding examining the rules relating to high-cost support in competitive areas could potentially impact, among other things, the support that Virginia Cellular and other competitive ETCs may receive in the future.*" (para. 31, emphasis added)

[67] The NPRM responds to the February 29, 2004 Recommended Decision of the Federal-State Joint Board (CC No. 96. 45, Released February 27, 2004).

[68] See Reply Comments, CC Docket No. 96-45, filed electronically on September 22, 2004.

primary-line funding mechanism will likely harm ILECs. A primary-line funding mechanism will be harmful because dilutes the network support received by ILECs.

Network Requirements and Service Quality Standards Several interveners raised issues involving service quality standards. MITS held that in the event the Commission designates WW as an ETC it should only do so if the designation is conditioned upon WW's meeting "pricing, service quality and technical standards." (TR 16) MTA also opposed designating WW as an ETC, in part, until WW meets the service quality requirements imposed on Qwest. The MCC also proposed service quality requirements upon which any designation should be conditioned. The Commission's rules will address in addition to those requirements and standards established in this order other standards that will apply to ETCs.

The Commission finds that all ETCs must comply with the Commission's ETC rules. The Commission has statutory authority to require WW as a condition of receiving ETC designation to comply with the requirements that the Commission imposes in this order and that it imposes in rules. The Federal-State Joint Board's Recommended Decision (FCC 04J-1, CC Docket No. 96.45, Released February 27, 2004) also provides guidelines for additional ETC eligibility requirements. These guidelines include the following five items (Recommended Decision, pp. 10-16): 1) adequate financial resources; 2) commitment and ability to provide the supported services; 3) ability to remain functional in emergencies; 4) consumer protection and 5) minimum local usage. The Commission intends to fully consider these guidelines in its ongoing ETC rulemaking proceeding.

Other Matters Other proposals raised by interveners that were not addressed here appear ones that the Commission can defer to its ETC rulemaking proceeding.

Conclusions of Law

The Commission has jurisdiction over applications for designation as an eligible telecommunications carrier in Montana. *47 U.S.C. § 214(e)(2); § 69-8-840, MCA.*

Consideration of the public interest applies in all applications for designation as an eligible telecommunications carrier. *47 U.S.C. § 214(e)(2), ("[u]pon request and consistent with the public interest, convenience, and necessity" a state commission may* *designate additional eligible telecommunications carriers).* The Commission has considered the public interest in this proceeding.

The Commission has proposed, and is considering the adoption of, rules governing the designation of eligible telecommunications carriers and the maintenance of status as an eligibile telecommunications carrier. *See PSC Docket No. L-04.07.5-RUL (formal publication of notice of hearing on the proposed rules is expected in the Montana Administrative Register on or about November 4, 2004).* The rules, as adopted, will apply to all eligible telecommunications carriers in Montana, including WWC Holding Co. The rules may modify or replace one or more of the terms and conditions in this order.

All pending motions, objections, and arguments not specifically acted upon in this Final Order are denied; to the extent denial is consistent with this Final Order.

ORDER

It is hereby ordered that the application of WWC Holding Co. for designation as an eligible telecommunications carrier is granted, subject to the terms and conditions included in this order.

Done and dated this 14th day of October, 2004, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

BOB ROWE, Chairman

THOMAS J. SCHNEIDER, Vice-Chairman

MATT BRAINARD, Commissioner

GREG JERGESON, Commissioner

JAY STOVALL, Commissioner

ATTEST:

Connie Jones
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.

<u>EXHIBIT B</u>

Montana PSC's Dec. 21, 2004 Reconsideration Order Affirming Western Wireless' Designation as an ETC in Qwest Areas in Montana

Service Date: January 5, 2005

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF WWC HOLDING CO.,	)	UTILITY DIVISION
Application for Designation as an Eligible	)	
Telecommunications Carrier in Montana	)	DOCKET NO. D2003.1.14
Areas Served by Qwest Corporation	)	ORDER NO. 6492b

ORDER ON RECONSIDERATION

A. Introduction

WWC Holding Co. (Western Wireless, Western, or WW), applicant in the above-entitled matter, has moved for reconsideration of the Public Service Commission's (Commission or PSC) October 22, 2004, order (*PSC Order No. 6492a*) granting WW status as an eligible telecommunications carrier (ETC), with conditions. WW's status as an ETC applies in most of the Montana non-rural service areas of Qwest Communications, Inc. The Montana Consumer Counsel (MCC), intervenor in WW's application, has also moved for reconsideration. Other intervenors, Montana Independent Telecommunications Systems (MITS) and Montana Telephone Association (MTA), have submitted arguments related to reconsideration by WW and MCC.

On reconsideration WW requests an ETC designation without conditions. MCC requests the additional condition of WW fund-receipt limited to new and captured lines. The PSC affirms PSC Order No. 6492a for the reasons, and with clarifications, discussed below. Absent the conditions included in PSC Order No. 6492a the PSC cannot conclude that WW's application is in the public interest, factually or legally, as WW's application and related case-in-chief does not otherwise clearly demonstrate a public interest. The PSC determines the Federal Communications Commission (FCC), not the PSC, is the proper authority to resolve MCC's new and captured line argument.

B. Western Wireless Motion for Reconsideration

1. WW Argument 1 -- General

a. Argument

WW urges the PSC to reconsider and reject all of the "*ad hoc*" requirements (conditions) that affect WW. At a minimum, WW seeks clarification of what WW argues are inconsistencies and ambiguities in the PSC order.

b. Intervenor Responses

MITS' response is an outright refutation of WW's assertion that no party to this docket disputed WW's satisfaction of the basic requirements contained in § 214(e)(1), the FCC rules, and §69-3-840 MCA. To the contrary, MITS cites to instances in the MITS and in MTA post-hearing briefs that dispute WW's assertion.

c. PSC Determination

WW is confused regarding what comprises the basic criteria that a petitioning ETC must satisfy. WW appears to satisfy the nine supported services as required by § 214(e)(1), but that section references the public interest requirement of § 214(e)(2), which allows the PSC to consider and perform a public interest analysis in any ETC designation. WW must comply with the PSC's public interest requirements identified in the order. So long as WW does not satisfy the public interest requirements WW will not be certified as an ETC as WW has not satisfied § 214(e)(2). And because WW has not satisfied § 214(e)(2), WW cannot have satisfied § 214(e)(1). Since § 69-3-840, MCA, is anchored to § 214(e)(1), the PSC's determinations regarding the public interest requirements leads in a logical trail directly to a conclusion that, absent the conditions, WW fails to satisfy § 69-3-840, MCA. To the extent the PSC determines clarification is necessary regarding PSC Order No. 6492a, the PSC will do so in this order.

2. Western Argument 2 -- PSC Authority, Formal Rulemaking Process

a. Argument

WW's motion asserts that the PSC should reconsider and delete the conditions of WW's designation as an ETC, as the PSC has exceeded its authority, in that the PSC can only take action consistent with its statutory authority established by §69-3-840, MCA, and § 214(e)(1). WW adds that because the PSC has acknowledged WW's satisfaction of § 214(e)(1), the PSC must designate WW as an ETC without further conditions or requirements.

WW further argues that even if the PSC is allowed to consider additional ETC conditions, the *"ad hoc"* requirements that the PSC imposed on WW are: 1) fatally flawed; 2) contrary to the PSC's rulemaking authority; and 3) unlawful and discriminatory. WW cites to three occasions when the Montana Supreme Court has reversed Montana state agencies for taking actions allegedly similar to those imposed by the PSC. Based on this case law, WW holds it is clear that the PSC implemented an unlawful rulemaking in this docket by establishing conditions in the order. WW suggests because the PSC's ETC conditions amount to rules, the protections of the Montana Administrative Procedures Act (MAPA) are triggered automatically. Because the PSC imposed rules on WW that were not adopted pursuant to lawful rulemaking authority they are invalid.

WW holds that the PSC's reliance on *TOPUC v. FCC* as authority to impose additional ETC requirements is without support, as *TOPUC* did not eviscerate the PSC's obligation to implement a rulemaking proceeding in these circumstances. WW also holds that *TOPUC* does not allow the PSC to unilaterally create "*ad hoc*" conditions to a federal ETC designation. Nothing in *TOPUC* addressed wireless carriers who have historically operated outside the regulatory jurisdiction of a state commission. Because the PSC's new requirements affected an unlawful rulemaking the PSC should reconsider its order and reject the "*ad hoc*" provisions.

WW also maintains that the PSC's ETC requirements unlawfully discriminate by only imposing on WW still pending rulemaking decisions. By its statement "[t]he very fact that the rulemaking proceeding is pending should preclude the imposition of what at this point can only be speculative conditions" WW appears to believe that the PSC's rules apply to WW prior to finalization and adoption. WW asserts later that the PSC imposes these new ETC requirements on WW alone and therefore they are discriminatory and unlawful. WW also holds that a formal rulemaking applies as the PSC has purportedly declared Montana policy.

WW maintains that the PSC is statutorily limited to applying 47 U.S.C. §214 adding that there is no authority in either "the Act" or Montana law that allows the PSC to apply § 254 selectively as MITS has proposed.

b. Intervenor Responses

MTA, MITS, and MCC filed responses on this issue. MTA recommends that the PSC should either deny WW's motion for reconsideration or hold in abeyance its grant of ETC status to WW until conclusion of the PSC rulemaking proceeding establishing rules that govern the designation of ETCs. MTA supports many of the requirements in the order. As for the authority, MTA cites to the FCC's *Virginia Cellular* decision adding that other FCC decisions reference *TOPUC*. MTA asserts, based upon these decisions that the PSC has an obligation to consider the public interest and impose requirements in ETC designations to protect the public interest. MTA adds that because WW objects to the imposition of any requirements not imposed on other competitive eligible telecommunications carriers (CETCs) the PSC can defer its designation of WW as an ETC until the rulemaking concludes.

MITS cites to the principles contained in § 254, ones MITS argues WW has chosen to ignore. MITS maintains that WW ignores significant rulings that clarify the role of state commissions in ETC designation proceedings, adding that the PSC's actions in the WW order fall well within the PSC's statutory authority. MITS also responds to WW's arguments that the PSC imposed new rules without conducting a formal rulemaking and that the process was not conducted in accordance with MAPA. MITS explains that it is not unusual for the PSC to impose compliance requirements in contested case proceedings and adds that the PSC neither intended nor did it impose new rules in this proceeding.

In regard to the ETC designation and certification requirements, MITS asks the PSC to clarify its finding that "…those rules will largely guide the decision making process involving both past and prospective ETC designations and annual certifications" (*Order 6492a, p. 22*).

MITS expresses puzzlement over WW's changed positions and observes that WW objected to the PSC's ETC contested case proceeding because a rulemaking should be used. Earlier WW objected to the rulemaking proceeding and to a proposed suspension of pending ETC petitions. More recently, WW sought to delay the rulemaking.

MITS also comments that the PSC's role is to ensure that its ETC designations are consistent with the public interest. Therefore, the PSC may reconsider prior ETC designations based upon new requirements. MITS also explains that the PSC's additional ETC requirements do not unlawfully discriminate against WW. MITS adds whether the PSC ever adopts rules is immaterial to the fact that the PSC reached its decisions in this contested case proceeding based on record evidence, rules of procedure, and MAPA.

MCC asks that the PSC deny WW's motion for reconsideration and grant the MCC's motion instead. MCC notes its disagreement with WW over the PSC's authority to impose conditions when considering ETC designations. While it may have preferred that a rulemaking occur first, taking up ETC applications such as WW's is necessary to protect the public interest. As for WW's recent motion for continuance of the ETC rulemaking the MCC adds that the PSC has the duty to issue orders that are in the public interest and not solely in WW's interest. As for WW's discrimination concern, the MCC holds that any perceived discrimination is avoided if WW agrees to forego receipt of universal service funds until all ETCs are on equal footing.

c. PSC Determination

The PSC statement regarding rules largely guiding the ETC decision making process, means that orders may contain requirements not in the rules and may relieve requirements in the rules. The rules fully contemplate case-by-case contested case proceedings. The reference to past and prospective ETC designations means that whereas the Commission has previously approved ETC designations for the incumbent LECs (ILECs) in Montana, those approvals were not conditioned to the extent included in the WW order. The ILECs and WW will be treated the same, once the ETC rules are adopted. There is no grandfathering of any ETC approval. Previously designated ETCs will have to comply, as will WW, with the PSC's ETC rules.

The Commission disagrees with WW's argument that the Commission's decision is unlawfully discriminatory. Whereas WW is correct that this is the first time the Commission has imposed such requirements, prior ETC cases did not include the issues that parties have raised in this docket. The WW application is contested with detailed arguments. The PSC must consider and address the intervenors' arguments. It is noteworthy also that WW is the first wireless carrier to seek ETC designation in Qwest's service territory as the prior designations were for wire line CETCs. Wire line CETCs will not likely raise all similar issues as raised by the consideration of wireless carriers seeking ETC designation. The PSC will remain technologically neutral, but cannot ignore significant issues such as wireless supplementing existing wire line service, not supplanting existing wire line service. In addition WW must realize that, to the extent it competes with Qwest in the areas WW has applied for designation, it is competing with a fully regulated carrier that is subject to rate review and existing service quality standards, and will be subject to the PSC ETC rules when adopted. The PSC will apply its ETC rules to previously designated ILEC ETCs and competitive ETCs alike. Thus, once the rules are complete the PSC will require all designated ETCs to establish compliance. If an ETC cannot or will not establish compliance with the PSC ETC rules, the ETC's status as an ETC will be in jeopardy.

The Commission will not restate here the basis of its authority, which is contained in the WW order, except to note the following. The 5th Circuit Court of Appeals vacated an FCC rule prohibiting the states from imposing additional eligibility criteria for ETC status. The Court stated: "Therefore, we reverse that portion of the Order prohibiting states from imposing any additional requirements when designating carriers as eligible for federal universal service support." *Texas PUC v. FCC,* 183 F.3d 393 (5th Cir., 1999). The PSC again finds support in the above authority as it does in the FCC's recent *Virginia Cellular* decision. Both decisions make clear the authority that a state commission has under § 214 to impose additional requirements that serve to promote the public interest. That is what the PSC has done in this case.

On the relevance of § 254 of the 1996 Act, the PSC finds that to the extent such principles are relevant to the public interest, which is a state commission consideration, then the § 254 principles can be considered.

3. Western Argument 3 -- Coverage Obligations

a. Argument

WW characterizes the PSC's coverage requirements as unlawful and ambiguous and asks that they be reconsidered. WW's motion distinguishes four separate arguments: 1) geographic coverage is an improper governing standard; 2) the coverage obligation condition is contrary to governing federal ETC standards; 3) the cream skimming concern is misplaced; and 4) the coverage obligation condition is internally inconsistent.

WW first argues that because the coverage condition is improperly based on geography instead of customers, that it should be eliminated. WW states that the PSC confused the obligation to serve geographic areas with the obligation to serve customers adding that neither the FCC nor federal law requires geographic coverage. The FCC has stated: "a new entrant, once designated an ETC, is required, as the incumbent is required, to extend its network to serve all customers upon reasonable request." WW cites the *Highland Cellular* case in which the FCC relied on the wireless carrier's commitment to serve customer requests, not the carrier's ability to blanket the area with radio signals. WW adds that the FCC's *Virginia Cellular* petition rejects the 100% geographic coverage in the context of service area requirements. Instead, the FCC's finding regards the obligation of a carrier to demonstrate that it can provide ubiquitous service "at the time of its request for designation as an ETC" (emphasis added). The FCC found that a carrier must improve its network and that its rules "acknowledge the existence of dead spots." WW concludes this first argument by stating that the proper inquiry is of whether WW has demonstrated its commitment and ability to serve customers and not just to propagate signals to 98% or more of Qwest's "service area."

WW's second argument regarding this issue has three parts. In the first part, WW restates the FCC policy that an ETC applicant must be allowed the same reasonable opportunity to develop its network as is afforded the ILEC and, once designated, the applicant ETC is only obligated to extend its network to serve new customers upon reasonable request. The means by which WW would meet "this standard" include: antenna redirection, a high-gain antenna at the customer's home, by adjusting network facilities and new cell sites or extenders.[1] WW adds that no party challenged WW's legal authority, ability or commitment to provide the supported services in "Qwest service areas" and the Commission's more stringent 98% geographic coverage requirement is without an evidentiary basis, is unfounded, and is preempted by federal standards. WW argues there simply is no requirement that WW "prove that it can provide ubiquitous service throughout its requested service areas prior to designation" (emphasis added).

The second and third parts of WW's argument hold that the Commission's coverage condition is patently discriminatory, contrary to governing standards, and without record support. As for the Commission's requirement that WW must, by means of its own resources, serve all reasonable requests for service, WW responds that it would be severely handicapped if it were prohibited from sharing some of the costs with its customers. Qwest, for example, may furnish service within its own areas by including "the potential for construction zone connection, facility or temporary development charges imposed on a customer." WW also argues that the Commission's requirement to file coverage maps every 90 days until it achieves 100% coverage should be rejected as it is contrary to legal standards and is unduly burdensome. In its November 30, 2004, reply to response briefs, WW maintains that MITS incorrectly believes that the Commission can require WW to demonstrate its ability to serve at least 98% of Qwest's customers in each wire center, adding that there is no support whatsoever to require an ETC to

[1] Although not mentioned here, in its testimony WW also mentions its "Tellular" wireless access unit and wireless local loop service (WLLS). (Order No. 6492a)

demonstrate its ability to serve a competitor's customers. WW holds that the proper inquiry is whether WW has demonstrated its commitment and ability to serve customers and not simply to propagate signals to 98 percent or more of Qwest's customers.

b. Intervenor Responses

MTA asserts that the requirement that WW expand service to 98% of its "coverage area" within one year of its receipt of funds is necessary to ensure that WW properly uses Federal Universal Service Funds (federal USFs) to expand beyond the existing WW 85% coverage ability.

MITS observes that WW has confused the PSC's requirement to serve customers within a designated area with geographic signal coverage. Because Qwest is required to serve 100% of its customers in a geographic area, MITS is "dumfounded" by WW's challenge of the order, as the order only requires 98% coverage. MITS suggests that the PSC reconsider, and impose a 100% requirement on WW. As for WW's cite to a South Dakota pre-emption order, wherein the FCC addressed the ability of an ETC to provide ubiquitous service at the time of its request, MITS comments that the PSC's requirement differs and the PSC is well within its authority to impose the requirements it imposed.

c. PSC Determination

WW has identified the specific Qwest wire centers for which it both seeks and does not seek ETC designation (*late filed exhibits 6 and 7*). WW proposed as a threshold criterion for seeking ETC designation its ability to offer service to at least 85 percent of a wire center's population.[2] The PSC order required WW to improve upon this minimal 85% coverage

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[2] WW asserts to need universal service funds (USF) to build out its network. WW adds that it will extend its network to serve "new customers upon reasonable request." (Initial Brief, p. 16; TR 48, 50) WW would not commit to expanding service to communities for which it has not

capability.[3] For each Qwest wire center (base rate and abutting zonal areas) the PSC required WW to achieve the capability to serve 98% of Qwest's customers.[4] The order states that until the PSC's rules address the time allowed for designated ETC's to achieve the capability to serve 98% of Qwest's customers in each wire center, WW is allowed one year from the time it begins receiving federal USF, pursuant to this order, to complete its network upgrades and document its ability to offer services to 98% of each wire center's customer base.

Although the PSC order did not require WW to initially provide coverage to 98% of Qwest's Montana study area the PSC questions WW's unwillingness to do so as reflecting upon an apparent self interest in serving lucrative wire centers (cream skimming, WW's minimal coverage of 85% of wire centers also appears a case of cream skimming). It also reflects upon WW's inability, as a wireless technology carrier, to assume the obligations that Qwest assumes and fulfills. The PSC expressed concern given the dynamics of telecommunications markets and the yet-to-be scrutinized financial resources and commitment of carriers that have or that seek ETC status.

The PSC required WW to file status reports at six month intervals that explain WW's progress in serving the entire population of each wire center for which it is designated an ETC.

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petitioned for ETC designation. (TR 96-96) WW asserts that it will use universal service fund receipts to expand its network to serve the remaining yet-to-be served 15 percent. (TR 283)

[3] Because WW chose the wire centers for which it seeks ETC designation based upon its ability to serve 85% or more of a wire center's population, it was asked to provide wire center maps that used to determine whether it met the 85% threshold. WW responded that no wire center level maps exist. (TR 141) WW adds that it superimposes data of its coverage on wire center boundaries and the population in its analysis, what it labels geocoding. (TR 142, 143, 151) The wire centers for which WW is designated an ETC include all "zone" areas outside the base rate area. (TR 280) If, a customer cannot receive WW's service (signal) despite the fact that it is located within a wire center (e.g., the other 15%) WW asserts that the customer can always get wireless local loop service. (TR 288)

[4] The MCC's first criteria requires an ETC to certify its commitment to provide to any requesting "customer's location within the designated service area the defined services."

These reports must provide the capital budget for prospective build out plans and describe the build out that WW actually has achieved (deployed) in the prior six months. Failure to provide these reports or to achieve the goal of serving 98% of each wire center's population, for which WW is designated an ETC, may result in measures taken to de-certify WW as an ETC.

The PSC order notes WW's explanation of how it may expand its coverage and enhance service quality. One option includes use of WW's Tellular, wireless access, unit (*TR 252-253*). Alternatives included adding towers and enhancements to the transmission capability of existing towers.

The PSC determined that WW must, by means of its own resources, serve all reasonable requests for wireless service at residences and businesses in each wire center. WW may choose the means by which it fulfills this obligation but it shall be, in the first instance, WW's responsibility and not that of its customers to provide coverage of each wire center at the minimal -104dBm (decibels per milliWatt) service standard.

The PSC ordered WW to provide maps of its actual signal coverage capability. WW must provide such information beginning 30 days after the issuance of the order in this docket and at 90 day intervals thereafter until it achieves 100% coverage. On each wire center map, WW must, based upon the –dBm standard, overlay maps of its coverage capability.

WW's motion for reconsideration characterizes the PSC order as requiring geographic coverage. Consistent with WW's petition, the starting point is each wire center for which WW seeks to be designated an ETC and which are well defined geographic areas. The order requires WW to achieve 98% coverage of each wire center's population within one year's time.[5] Although WW's argument on this point is puzzling, it appears directed at the PSC's required 98% population coverage in each wire center. Thus, WW's motion is logically and fundamentally inconsistent with WW's own direct testimony. It was WW who first proposed a

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[5] All but one of the Commission's findings correctly notes WW's coverage obligation as 98% of a wire center's population. The single reference to 100% was a typographical error and should also be 98% (see p. 25, under the heading Coverage Obligation).

population coverage per wire center metric (*Order 6492a, p. 7*).[6] WW chose wire centers as the relevant geographic area and then only seeks ETC designation if it can achieve 85% coverage of the population in each wire center. While the PSC has not changed the metric that WW initially proposed (population coverage per wire center) it has specified a higher standard as an eventual goal that WW must minimally achieve by the first anniversary of its designation as an ETC.

In addition, WW's own witness (Blundell) testified that the PSC has § 214(e)(2) authority to establish universal service areas and that service area is a geographic area established by a state commission. In the case of Qwest, the service area is the wire center. Thus, it is abundantly clear that the PSC has not chosen a different metric than WW proposed. The PSC has only used a higher standard, not a different metric.

As for WW's apparent interpretation that the PSC order requires WW to "prove that it can provide ubiquitous service throughout its requested service areas prior to designation" WW again appears confused. The order imposes absolutely no requirement that prior to designation as an ETC WW must achieve a 98% level of population coverage. The PSC notes, however, that WW's proposed 85% coverage threshold prior to its designation as an ETC is a threshold that the PSC finds reasonable. The PSC only requires WW to improve upon and achieve 98% coverage within a year of when it satisfies all requirements to be designated an ETC.

As for WW's argument challenging the PSC's 98% coverage requirement, the PSC finds necessary a reminder that the federal goal is to make available to all people of the United States communication services at reasonable charges. This goal is a pre-eminent goal of the Montana Telecommunications Act (*see §§ 69-3-802 and 69-3-841, MCA*). In light of this goal, WW's 85% threshold standard for deciding upon which wire centers it would seek ETC designation is an arbitrarily lower standard that is without foundation other than WW selected it.

In selecting the 98% standard, the PSC is in agreement with MCC that there is confusion over the purpose of ETC designations and the goal of universal service (*TR 315*). The goal of

[6] WW's asserts to have analyzed its ability to serve 85% of the population.

universal service is fundamentally to serve people that are not served and to continue to serve existing customers, all at affordable rates with quality service. The PSC stopped short of a 100% goal in reflection of the fact that there are impediments to achieving 100%. The presence of dead spots, for example, limits penetration by wireless carriers. The last 2% of the population that WW does not have the obligation to serve provides WW with the flexibility of choosing those customers that it will serve. In addition, 98% is not much above the national average penetration rate for phone service. The 2000 decennial census pegs the penetration rate for phone service at about 97.6%, a value slightly higher than the FCC's estimate of 95.1% for the United States.[7]

As for the WW's motion objecting to the PSC's requirement that WW must by means of its own resources serve all reasonable requests for wireless service at residences and businesses at its own expense the PSC first notes that until WW petitioned the PSC for ETC designation it imposed no requirements that WW serve any customers in Montana.

WW admits elsewhere that it has an obligation to serve "all" customers. In its recent October 15, 2004, comments to the FCC, WW states that "both ILEC and CETC <u>must serve all</u> consumers within designated service areas" (*<u>emphasis added</u>, Western Wireless Comments On Reform of the Rural High-Cost Support System, October, 15, 2004, CC Docket No. 96-45, p. 15*). WW explained that it may expand its coverage and enhance service quality by use of a Tellular wireless access unit (*TR 252-253*). Another means by which WW committed to provide service was wireless local loop service (WLLS) (*Order 6492a, p. 5*). The PSC did not require WW to serve "all" consumers, but did require WW to offer services to 98% of each wire center's customer base, and only then within one year after its designation as an ETC. The PSC continues to maintain that WW must achieve this and do so at its own expense.

As for WW's cite to one of Qwest's tariff and the provisions for construction and other special charges, the PSC finds that there are indeed differences in obligations between the CETC and the incumbent ETC. Qwest provides unlimited local residential service for $16.73/month

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[7] See FCC's October 2004 Telephone Subscribership in the United States at the following URL: http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/subs0704.pdf

before adding other charges (e.g., federal USF, 911, EAS, etc.). If Qwest's line extension tariffs are relevant to this ETC designation proceeding, other of Qwest's tariffs may also be relevant. MCC's proposal in this regard was not embraced in the PSC order. It is noteworthy that the federal USF that Qwest receives, and that WW will also receive upon satisfaction of the public interest requirements in the order, are for the actual lines that Qwest serves.

Finally, as for WW's objection to the PSC's requirement to file coverage maps every 90 days until it achieves 98% coverage, the record is sorely deficient on the quality of service that WW will provide. WW has the burden to buttress assertions and in the absence of evidence supporting its assertions the Commission may impose reporting requirements, one of which is to file maps every 90 days until WW achieves 98% coverage.

Although only mentioned at the onset of its motion and not a point on which it later expands, WW made a faint effort in its motion to dispute the PSC's cream skimming findings. The PSC is unmoved by WW's motion to reverse its initial findings on cream skimming. Although it seems obvious to the PSC that WW is cream skimming, a simple illustration may help.[8] This is one reason why the PSC sets as a target the ability to achieve 98% customer coverage in each of Qwest's wire centers.

4. Western Argument 4 -- Service Quality Monitoring

a. Argument

WW requests the PSC reconsider and clarify findings in the PSC order. First, WW asks

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[8] WW seeks federal USFs that vary by and that reflect the average cost of all lines in each wire center, including high and low cost loops. The average support level per wire center, including that for higher cost lines, must exceed that for the, assumably, more profitable 85% of the population that WW claims to be able to initially serve. As long as WW serves less than 100% of the wire center's population and assuming it serves the more profitable lines first (85%), then WW receives federal USFs that exaggerate the cost as estimated by the FCC's high-cost model. This is an implicit federal subsidy that derives from WW's cream skimming 85% of the most profitable lines first.

that references to "wire center" be deleted from the filing requirement as the wire center location for complaints monitoring is not relevant to WW's customer service. WW adds that its "processes" do not provide complaints information by wire center and the wire center is not "an existing data field within the systems for the simple reason that such information is not helpful in improving Western Wireless' network as a whole, and thus provides no insight into Western Wireless' quality of service." WW argues that it simply is unnecessary for WW to provide complaint reports to the Commission on an address-by-address basis.

WW's also states that the obligation to report unfulfilled requests for service must be clarified and found inconsistent with the customer complaint reporting requirement. WW explains that its systems do not track service requests with respect to Qwest wire centers. WW's adds that any such requests are based on the customer's address, which would allow subsequent mapping by wire center if so desired. WW concludes that the Commission should clarify these two requirements and clarify that reporting information by Qwest wire centers is not required.

b. Intervenor Responses

MTA comments that the required service quality monitoring, lifeline, and service packages are straightforward and ensure that WW's use of funds is proper and consistent with the public interest.

MITS' response disagrees with WW's motion because WW's initial petition identified the Qwest wire centers for which it sought ETC designation and because WW combines publicly available mapping software with its signal coverage to determine the extent to which each Qwest wire center is covered by WW today. MITS notes that Qwest's service maps are on file with the Commission. MITS adds that WW will receive universal service funds for customers that will likely continue their landline services with Qwest. MITS adds that the Commission's apparent concern over WW's ability to provide adequate service quality is reasonable, prudent and defensible.

c. PSC Determination

The PSC order states that the PSC will monitor WW's ability to provide service. The PSC order requires WW to report on requests for wireless service that WW is unable to satisfy regardless of how those requests were communicated to WW (*e.g.*, voice, email, or letter). The order requires these reports to detail WW's inability to serve customers by the customer location in each wire center. The reports were to provide a detailed description of why customer requests for service could not be satisfied and WW was to file such reports on a quarterly basis for as long as WW is designated an ETC.

The PSC order also requires WW to document and report the number of customer complaints that it receives. In each wire center for which WW was designated an ETC, WW must record the complaints that it receives from customers, identify the nature of the complaint (*e.g.*, poor transmission, dropped calls, busy signals) and explain the remedy employed to address each complaint. Based upon these records it must be possible to map the complaints to addresses within each wire center. A record of repeat complaints was to be maintained. The order required WW to file with the Commission on a quarterly basis the complaint records. The complaints-reporting requirement pertains only to WW's provision of service at the addresses of both residential and business subscribers in those Qwest exchanges for which WW is designated an ETC.

First, for purposes of providing reports on customer complaints WW admits that it has the addresses of customers. Second, and as a matter of logic, WW must know which wire center each customer is in otherwise it cannot submit to USAC (Universal Service Administrative Company) a legitimate request for federal universal service support. All the Commission has done is marry these two facts. WW must either submit reports on complaints by address by wire center or it must forego designation as an ETC.

Similarly, and with respect to unfilled requests for service, if a customer requests and receives service in a Qwest wire center for which WW is designated an ETC, the customer count will ratchet up a notch. WW must know each wire center for which a customer receives service or there is no integrity to the process established by the FCC to establish wire center specific costs and support mechanisms for carriers based upon the number of customers served in each wire center. Thus, the ability to identify a wire center for which WW is unable to provide service, given it must identify wire centers for which it can provide service, are logically related requirements. Again, WW can ignore this requirement as long as it does not wish to be designated an ETC. The Commission finds the obligation absolute and will impose the same on every other ETC designated to serve in non-rural carrier wire centers.

As for the relevance of the Commission's requirement, it was WW who in the first instance sought to be designated an ETC in wire centers for which it can serve at least 85% of the population. If WW's motion has any logical foundation, then the basis upon which WW's application was filed is erroneous. WW cannot have it both ways. It cannot petition in the first instance to be an ETC based upon its ability to serve 85% of a wire centers population and turn right around and claim it has no information on its ability to provide service. The two WW positions are at war with themselves.

5. Western Argument 5 -- Reporting Federal Universal Service Support

a. Argument

WW requests the PSC reconsider and modify the requirement that it report for each wire center on a quarterly basis the federal universal service support that it receives. WW's motion adds that because this requirement was not imposed on any other ETC that it is patently discriminatory. WW questions the need for such information. WW maintains that, in any case, it cannot report such data by wire center as USAC does not provide information to WW that provides such detailed information and therefore WW has no ability to allocate the support it receives among the Qwest wire centers. WW maintains that USAC's funding mechanism prevents WW from reporting universal service funds on a wire center basis.

b. Intervenor Responses

MITS argues that the requirement is not overly burdensome and it is reasonable to track ETC funding. There must be a correlation between the access lines it reports to USAC and the per-line funding it receives which is wire center based.

c. PSC Determination

The PSC order required WW to report the federal USFs including the Lifeline and Link Up credits that it receives. The reports were to be filed quarterly for each wire center in which WW is designated an ETC.

If, as WW holds, wire center level detailed information is not available from USAC, then the Commission requires WW to copy the Commission with every filing it makes to USAC for federal USF support in the specific wire centers for which it is designated an ETC. That resolution should resolve the inability USAC has to provide WW data.

If however the above resolution is one that WW also opposes, then the Commission is obliged to withdraw its intent to designate WW an ETC for Qwest's wire centers. The Commission must reverse its prior decision as the only way that WW can receive federal USFs, in the case of service in a service area of a non-rural carrier such as Qwest, is if WW reports to USAC the number of subscribers it serves by wire center. This is so because the FCC's high cost model funding varies by wire center. Thus, if in the first instance WW has no knowledge of whether its customers are in one or another of Qwest's wire centers, the Commission has no guarantee that WW is submitting claims for the actual number of customers it has in each of Qwest's wire centers. This requirement is absolute and until WW produces the requested information, the Commission will not certify WW as an ETC.

As for WW's assertion that the requirement is patently discriminatory the Commission disagrees. This requirement will be placed on each and every designated ETC in Montana that seeks designation for service areas of non-rural carriers. Thus, before Qwest is certified again as an ETC, it too will have to provide this information as will any other ETC designated to serve in Qwest's service area.

6. Western Argument 6 -- Filing of Rate Plans

a. Argument

WW agrees to file information that identifies its rate plans and standard customer service agreement. WW, however, expressly reserves (citing 47 U.S.C. §332(c)(3)) its legal right to challenge any action of the PSC that amounts to unlawful regulation of such a filing.

b. Intervenor Responses

MITS responds that it is unlikely the PSC has adequate authority to deny WW its legal right to challenge PSC actions. WW's request to include in the order on its motions language that suggests the order is reviewable upon appeal should be summarily dismissed.

c. PSC Determination

The PSC order required WW for as long as WW is designated an ETC to have on file with the PSC a copy of each rate plan that it offers for which it may receive federal universal service support. Each plan must include the rates, terms and conditions of service. The PSC shall establish in rules any necessary rate caps and terms for unlimited service (minutes of use). WW will have to comply with those and other rules, once the rules are adopted.

WW appears confused over the relevance of § 332(c)(3). This Commission would not impose any requirements on WW, but for WW's petition to receive federal USFs. WW was free to enter the wireless market in Montana just as it is to exit the market and without any PSC approval so long as WW is not also designated the ILEC. However, the PSC is compelled by both § 214 and § 69-3-840, MCA, to ensure that WW's designation is in the public interest. When WW's petition to be designated an ETC is granted, concomitant obligations emerge that involve whether the designation is in the public interest. WW has no option but to file its rate plans as required by this Commission for as long as it is a recipient of federal USFs. If WW ceases to have on file with the Commission all rates, terms and conditions, then WW will not be certified an ETC by the Commission.

7. Western Argument 7 -- Lifeline Requirement Condition

a. Argument

WW asks the PSC to reconsider and eliminate the requirement that it file as a prerequisite to obtaining "a Lifeline assistance for qualifying low-income consumers" a certification with USAC regarding its compliance with the FCC's Lifeline rules. WW adds that such a request is contrary to FCC Rule 54.401(d), in that the USAC does not provide any such certification as a prerequisite to providing Lifeline support. WW also adds that on a quarterly basis it certifies to USAC its compliance with 54.401(d), but USAC does not respond by certifying WW's compliance.

b. Intervenor Responses

MITS comments that the FCC has established requirements for ETCs in regard to Lifeline assistance adding that all ETCs should comply with applicable state and federal rules and programs.

c. PSC Determination

The PSC order required WW to file with the USAC its demonstration that its Lifeline plan complies with the FCC's rules. Once the USAC certifies that WW's plan is compliant with the FCC's rules Lifeline assistance will be available to qualifying low-income consumers served by WW.

Although the cited FCC rule states explicitly that USAC must certify an ETC's compliance the PSC has, through informal communications with USAC, verified that, in fact, the USAC does not certify ETC compliance plans as explicitly required by the rule. Thus, when WW has complied with the requirements of this order, this Commission will inform USAC of WW's compliance.

C. MCC Motion for Reconsideration

a. Argument

MCC agrees the PSC has authority to place conditions on any grant of ETC status. MCC urges the PSC to condition the grant of ETC status on compliance with FCC rule 47 C.F.R. §54.307(a). The rule provides that a CETC shall receive USFs to the extent that the CETC captures subscriber lines of an ILEC or serves new subscribers in the ILEC's service area. MCC recites the Commission's express concern over the size of the federal USF and restates the Commission's finding (Order 6492a, p.17) that deferred to the FCC the resolution of the issue.

> *These concerns are, however, being addressed at the Federal level by both the FCC and the Federal-State Joint Board. For that reason, the Commission also finds the MCC's testimony on how to interpret what "new" and "former" subscribers are (FCC Rules, Section 54.307) is an issue that is more appropriately resolved by the FCC. The FCC's recent NPRM (CC 96-45, Released June 8, 2004) has as one issue the concern raised here by the MCC. Therefore, it appears to the Commission unnecessary to address how to interpret the FCC's rules on new and captured customers in this docket. (*Order 6492a, p.27, footnote excluded*)*

MCC requests the PSC to reconsider the above finding with respect to the "new and captured lines issue." MCC argues the PSC's failure to condition Western's designation as a CETC on limiting USFs based on new and captured lines violates the rule, provides a "windfall" to Western at the expense of consumers, does not relate to the universal service principles of 47 U.S.C. §254(b), and is a "serious mischaracterization" of FCC action on this issue.

MCC also asserts that the PSC's failure to limit support to new and captured lines violates the federal law as previously argued in the MCC's briefs:

> *The limitation of support to captured and growth lines is a positive requirement of the FCC's regulations, and is the only reading of 47 C.F.R. §54.307(a) that makes any sense as a matter of statutory construction and in the context of the goals of universal service. It is also the only reading*

> *that is consistent with the concept of portability of universal service. If the Commission approves Western Wireless' application, it should do so in accordance with federal law, including 47 C.F.R. §54.307(a), by requiring that the company only report and receive support for captured and growth lines. MCC Response Brief at p.9*

MCC holds that the meaning of captured and growth lines was explained in its opening brief and this meaning is clear and is contrary to the PSC's findings in PSC Order No. 6492a and therefore needs no "interpretation." MCC adds that the FCC, despite its concern about the growth in the USF is not apparently enforcing its own regulations, thereby compounding the growth in the fund about which it has concern. MCC asserts that the failure of the FCC to enforce its own rules does not give the PSC license to issue an order that violates federal law. MCC urges the PSC to condition its order on the existing rule as this would alleviate the growth in the USF by preserving the ability of carriers to operate, maintain and expand networks that serve the universal service set forth in § 254(b). The failure to limit Western's draw on the federal USF to captured and growth lines results in a "windfall" that is an expense to customers for service that Western already provides. The federal USF should not be burdened with subsidies for the 90,000 or so lines that WW serves when there is no corresponding public universal service benefit. In addition, the PSC's finding rests on a mischaracterization of the FCC's Notice of Proposed Rulemaking (NPRM) as the "concept of limiting funding, as the law already provides, to captured and new lines, does not appear in the FCC's notice." Thus, the NPRM is a false premise upon which the Commission finds it unnecessary to address the issue.

b. Intervenor Responses

MTA supports the MCC's request to reconsider insofar as the PSC order fails to require that Western report and receive support only for captured and new growth lines. MTA asserts that there is significant record evidence in support of the view that USF support be limited to new and captured lines. The PSC's decision therefore ignores several facts: 1) neither the FCC nor the Federal-State Joint Board has actually committed to address this concern and the FCC's inquiry focuses instead on the "primary line" issue; 2) the Commission should not permit Western to exploit the FCC's lack of enforcement, as doing so would violate the PSC's own public interest mandate; and 3) as Western clearly intends to report all of its lines, the PSC should require otherwise or Western will receive a "windfall."

c. PSC Determination

MCC is correct that the FCC NPRM did not explicitly ask for comments on captured and new lines. This argument misses the point, however, as the FCC's NPRM attaches the Federal-State Joint Board's (FSJB) February 27, 2004, Recommended Decision.[9] The FCC's NPRM seeks comments on the scope of support issue contained in the FSJB's recommended decision, which explicitly discusses at numerous points the issue of captured lines. Therefore, there was an opportunity to comment on the issue raised by the MCC as indicated in the PSC order.

The PSC also determines the FCC rule does not have an affirmed meaning. The phrase "...serves new subscriber lines..." has not been interpreted, and could mean lines to anyone anywhere or to lines only at residence and business locations. Wireless being a condition of joint products also has not been considered in application of the rule. Wireless produces joint products as consumers can use them to substitute for wire line services, which appears not to be the normal purpose, or consumers can use them for what wireless is uniquely designed to do which is to provide mobility amenities, which is a complement to, or an entirely different product than, local basic exchange service.

To the extent that mobility is the main purpose and use for the consumer, then an implicit interpretation of the FCC rule and FCC action has been apparently to fund every conceivable wireless with federal USFs. This interpretation points to the enormity of the FCC's leadership

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[9] In its February 27, 2004 Recommended Decision (RD) to the FCC a majority of the members to the Federal State Joint Board on Universal Service (FSJB) favored a primary line restriction. The FCC sought comment on the FSJB's RD and the Montana PSC comments were in opposition to the primary line restriction in favor of basing support upon a carrier's own costs.

failing. This is why the PSC must leave resolution to the FCC. Just how this problem is to be resolved is a policy issue before the FCC and upon which the FCC will issue new rules. The PSC has, in response to the FCC's invitation for comments, responded in favor of limiting the scope of universal service funding, primarily by means of basing ETC support upon the ETC's own costs.[10]

PSC ORDER

The PSC grants reconsideration to Western and MCC for the purposes of further consideration. Upon further consideration the PSC denies the motion of Western and the motion of MCC and affirms PSC Order No. 6492a in accordance with the above discussions and clarifications.

Done and dated this 21st day of December, 2004, by a vote of 4-0.

[10] See Montana Commission's September 22, 2004 Comments. In initial comments, OPASTCO, RICA and RTG Inc. proposed a tiered series of safe harbor ratios for determining a wireless CETC's per-line support as an alternative to a primary line restriction. The Commission agreed that OPASTCO's proposal is an alternative to a primary line restriction, although basing support on a carrier's own cost is a better solution. If a CETC disagrees with the percentage of the ILEC's federal support (e.g., 20 percent with Tier II), the CETC, under the OPASTCO proposal, may always submit its own costs.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

THOMAS J. SCHNEIDER, Vice-Chairman

MATT BRAINARD, Commissioner

GREG JERGESON, Commissioner

JAY STOVALL, Commissioner

ATTEST:

Connie Jones
Commission Secretary

(SEAL)

<u>EXHIBIT C</u>

Western Wireless' February 17, 2005 Certification to the Montana PSC

Western Wireless.

February 17, 2004

Mr. Martin Jacobson
Staff Attorney
Montana Public Service Commission
1701 Prospect Avenue
P.O. Box 202601
Helena, MT 59620-2601

RE: **MONTANA PSC 2005 ETC CERTIFICATION TO THE FCC FOR 2005 FEDERAL UNIVERSAL SERVICE SUPPORT, PSC DOCKET NO. N2004.7.121**

Dear Mr. Jacobson:

Pursuant to the letter dated August 27, 2004 from Martin Jocobson, Staff Attorney, Montana PSC, to All Montana ETCs, Rural and Non-Rural, Western Wireless Corporation (SAC 489004) requests that the Montana Public Service Commission certify the Company as a competitive ETC eligible to receive federal high-cost support (including High-Cost Model) for its ETC designated service area. All communication regarding ETC certification should be addressed to Mr. Gene DeJordy, Vice President of Regulatory Affairs, Western Wireless Corporation, 3650-131st Avenue, S.E. #400, Bellevue, WA 98006.

Western Wireless' ETC service area in Montana includes 63 wire centers in the Qwest study area. Please find attached the complete list of Qwest wire centers where the Company is designated. Based upon this designation, Western Wireless is a non-rural, competitive ETC.

As required by FCC rules, the respective state commission must certify an ETC by April 1, 2005, in order for carriers to receive federal high-cost support by July 1, 2005. Because of the delay between certification and eligibility to receive universal service support, Western Wireless respectfully requests that the Commission certify the Company's eligibility effective upon the Commission's notification of certification of eligibility to the FCC or USAC. As evidenced by the attached Affidavit, Western Wireless commits to use all funds in compliance with Section 254(e), which requires carriers to use their universal service support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." (See also 47 C.F.R. § 54.313(b)).

3650 131st Ave. SE • Suite 400 • Bellevue, WA 98006 • Phone: 425 586-8700 • Fax: 425 586-8666

Regarding the rate comparability issue in the FCC's October 27, 2003 Order in CC Docket No. 96-45, the FCC clarified that "the basic service rate template cannot necessarily be applied to the rates of competitive carriers, whose rates generally are not regulated by the Commission or the states and do not always include the rate elements specified in the template."[1] Consequently, as other states have concluded, the rate comparability requirement for carriers serving non-rural service areas does not apply to competitive ETCs such as Western Wireless. Nonetheless, Western Wireless will respond to any supplemental letter from the Commission on this issue.

Please call me if you have additional questions.

Sincerely,

Gene DeJordy
Vice President, Regulatory Affairs
425.586.8055

Enclosure

Cc: Mike Green
Jim Blundell

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[1] *In the Matter of Federal-State Joint Board on Universal Service*, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, CC Docket No. 96-45, ¶88 (Rel. October 27, 2003).

DESIGNATION OF COMMON CARRIERS AS ELIGIBLE TELECOMMUNICATIONS CARRIERS (ETC) TO RECEIVE FEDERAL UNIVERSAL SERVICE FUNDS PURSUANT TO THE FEDERAL COMMUNICATIONS COMMISSION'S FOURTEENTH REPORT AND ORDER ADOPTING A STATE CERTIFICATION PROCESS	§ § § § § § § §	MONTANA PUBLIC SERVICE COMMISSION

STATE OF WASHINGTON
COUNTY OF KING

DECLARATION OF GENE DEJORDY

1. My name is Gene DeJordy. My title is Vice President, Regulatory Affairs, Western Wireless Corporation. My business address is 3650 – 131st Ave., S.E., Suite 400, Bellevue, Washington 98006, and my business telephone number is (425) 586-8055.

2. WWC Holding Co. Inc., a wholly-owned subsidiary of Western Wireless Corporation (both referred to as "Western Wireless"), is a commercial mobile radio service ("CMRS") carrier. In Montana, Western Wireless has been designated as an eligible telecommunications carrier ("ETC") in certain non-rural telephone company exchanges by the Commission for purposes of receiving federal universal service support. See *In the Matter of WWC Holding Co., Inc. Application for Designation as an Eligible Telecommunications Carrier in Montana Areas Served by Qwest Corporation*, Docket No. D2003.1.14 (Order No. 6492b, Order on Reconsideration) dated January 5, 2005. Section 254(e) of the Communications Act, 47 U.S.C. § 254(e), provides that ETCs receiving universal service funding must "use that

support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." To implement this provision, the Federal Communications Commission ("FCC") adopted a rule providing that an ETC may receive certain types of federal universal service funding only if the state commission files a certification that all federal high-cost support provided to the carrier will be used as required in Section 254(e). 47 C.F.R. § 54.313.

3. Accordingly, Western Wireless hereby certifies, pursuant to 47 U.S.C. § 254(e), that it will utilize all federal high-cost universal service support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

4. Western Wireless respectfully requests that the Commission file with the FCC and USAC a certification letter that Western Wireless will utilize universal service support as intended by 47 U.S.C. § 254 (e).

I declare under penalty of perjury that the foregoing is true and correct.

Gene DeJordy

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned authority, on this the 17th day of February, 2005.

Notary Public

State of Washington

SEAL: DOROTHY J. KELLY NOTARY PUBLIC COMMISSION EXPIRES 10-15-06 STATE OF WASHINGTON

WWC HOLDING CO., INC. (SAC 489004)
MONTANA ETC SERVICE AREA

State	MT

Incumbent Carrier Name	SAC	Wire Center	Wire Center Name
QWEST	485104	AMSTMTMA	AMSTERDAM
		ANCNMTMA	ANACONDA
		BLDRMTMA	BOULDER
		BLGRMTMA	BELGRADE
		BLNGMTMA	BILLINGS
		BLNGMTWE	BILLINGS-WEST
		BUTTMT09	BUTTE
		BUTTMT18	BUTTE
		BZMNMTMA	BOZEMAN
		CLMBMTMA	COLUMBUS
		CLNCMTMA	CLANCY
		CLPKMTMA	CLYDE PARK
		CLSTMTMA	COLSTRIP
		CNFYMT02	CANYON FERRY
		CNRDMTMA	CONRAD
		CRVSMTMA	CORVALLIS
		CSCDMTMA	CASCADE
		CTBNMTMA	CUT BANK
		DLLNMTMA	DILLON
		DRLDMTMA	DEER LODGE
		EGPKMTMA	EAST GLACIER
		EHLNMTMA	HELENA-EAST
		FCTWMTMA	FRENCHTOWN
		FRMBMTMA	FROMBERG
		FRSYMTMA	FORSYTH
		FRVWMTMA	EAST FAIRVIEW
		GLGTMTMA	GALLATIN-GATEWAY
		GLNDMTMA	GLENDIVE
		GRFLMTMA	GREAT FALLS
		HAVRMTMA	HAVRE
		HLNAMTMA	HELENA
		HLNAMTNO	HELENA-NORTH
		HMTNMTMA	HAMILTON
		HRDNMTMA	HARDIN
		JOLTMTMA	JOLIET
		LARLMTMA	LAUREL
		LOLOMTMA	LOLO
		LVTNMTMA	LIVINGSTON
		LWTWMTMA	LEWISTOWN
		MLCYMTMA	MILES CITY
		MLTWMTMA	MILLTOWN
		MNHTMTMA	MANHATTAN
		MSSLMTMA	MISSOULA
		MSSLMTSO	MISSOULA-SOUTH
		OPRTMTMA	OPPORTUNITY
		PRCYMTMA	PARK CITY
		RBRTMTMA	ROBERTS
		RDLGMTMA	RED LODGE
		SDNYMTMA	EAST SYDNEY
		SHLBMTMA	SHELBY
		SHPHMTMA	BILLINGS-SOUTH
		STVLMTMA	STEVENSVILLE
		THFKMTMA	THREE FORKS
		TRRYMTMA	TERRY
		TWNSMTMA	TOWNSEND
		ULM MTMA	ULM
		VCTRMTMA	VICTOR
		VGHNMTMA	VAUGHN
		WGLCMTMA	WEST GLACIER
		WHTHMTMA	WHITEHALL
		WIBXMTMA	WIBAUX
		WRSPMTMA	WARM SPRINGS
		WYLWMTMA	WEST YELLOWSTON

Count

EXHIBIT D

Montana PSC's March 21, 2005 Certification of Western Wireless as an ETC in Qwest Areas in Montana

Montana Public Service Commission

Greg Jergeson, Chairman
Brad Molnar, Vice-Chairman
Doug Mood
Bob Raney
Thomas J. Schneider

1701 Prospect Avenue
PO Box 202601
Helena, MT 59620-2601
Telephone: (406) 444-6199
FAX#: (406) 444-7618
http://www.psc.mt.gov

March 21, 2005

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW - A306
Washington, D.C. 20554

Irene M. Flannery
Vice President, High Cost and Low Income Division
Universal Service Administrative Company
2000 L Street, N.W., Suite 200
Washington, D.C. 20036

RE: Certification of High Cost Support for Non-Rural Carrier

Dear Ms. Dortch and Ms. Flannery:

The Montana Public Service Commission (Montana PSC) has recently granted eligible telecommunications carrier status to Western Wireless Corporation (WWC), SAC 489004, within Montana's only non-rural study area, the Qwest Corporation study area. WWC has properly requested a Montana PSC use-of-funds certification to the Federal Communications Commission (FCC) and the Universal Service Administrative Company (USAC).

The Montana PSC hereby certifies that all federal high cost support provided to WWC in this state will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, consistent with section 254(e) of the Communications Act of 1934, as amended. This includes High Cost Model support.

Attached is the Montana PSC 2004 annual certification (for 2005 receipt of funds) list of non-rural carriers certified pursuant to section 54.313 of the FCC's rules (47 C.F.R. § 313), which requires states to establish an annual certification process for non-rural carriers receiving federal high cost support. The list is now amended to include WWC. As requested by the USAC, listed beside each carrier is its assigned study area code (SAC), if known.

Sincerely,

Greg Jergeson

Greg Jergeson
Chairman, Montana PSC

September 28, 2004, Montana PSC 2004 Certification for 2005 Support
Amended March 18, 2005, to Reflect the Addition of Western Wireless Corporation

Non-Rural ETCs

1. Qwest Corporation -- 485104
2. Mid-Rivers Telephone Cooperative, Inc. -- 489001
3. 3 Rivers Telephone Cooperative, Inc. -- 489003
4. Western Wireless Corporation -- 489004

Connie Jones
For the Commission